

Index

[Please note that IP stands for ‘Intellectual Property’ and ‘IPRs’, Intellectual Property Rights. References to Figures or Tables will be in *italic* print]

- abuse of a dominant position 13, 55–56, 96, 97, 111
- acquis communautaire* 10, 30, 42, 48
 - and copyright 274, 299, 305
 - object of IP protection 36, 37
- adequacy, protection requirements 37
- Administrative Council 64
- advertising 141
 - Comparative Advertising Directive 156, 170, 172, 175
 - keyword 156, 157, 160
 - Misleading Advertising Directive 156
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) 29, 54, 100
 - competition law 100, 101, 106
 - and copyright 299, 310
 - design law 360, 365
 - and enforcement 409, 411, 422, 428
 - geographical indications 185–186, 187, 210
 - human biotechnology 237, 239
 - Legal Framework of IPRs, at regional level 61, 73
 - object of IP protection 36, 40
 - patents 227, 232–233
 - plant biotechnology 235, 237
 - trademarks 133, 134, 135, 139, 165
- Agricultural Product Quality Policy Committee 208
- Agricultural Product Quality Schemes 180
- agriculture diversification, and
 - geographical indications 32
- alpha-type interferon 238
- Amp v Utilux* (1972) 367–369, 376
- Anti-Counterfeiting Trade Agreement (ACTA), proposed 9, 19, 73, 387
 - criticism 395–396
 - impact for IP enforcement in EU 394–408
 - Opinion of EU academics 11, 20, 399–408
 - rejection (2012) 11
- anti-dilution protection, trademarks 145, 146, 149, 150, 152, 155, 156
- Anton Piller orders* 420
- Archambeau, Christian 440–446
- archives, and copyright 285–286
- artistic work, Duchamp perspective 369–372
- authors, and copyright 283
 - Copyright Code (EU) 297–298, 302–303
- autonomy, information society 98
- Babcock, B.A. 197
- Balkin, J.M. 107
- Beebe, B. 144
- Benelux Convention on Intellectual Property, 2005 333
- Benelux Convention on Trademarks, 1962 333
- Benkler, Y. 98
- Bérard, L. 184, 187
- Berne Convention for the Protection of Literary and Artistic Works (Berne Convention), 1886 40, 44, 61, 299
 - design law 359, 360, 370
 - digital agenda, and copyright 321, 322
 - harmonization of copyright 275, 278
- Bernt Hugenholtz, P. 273–291
- Binctin, N. 18

- biotechnology
 - biological material 233–234, 241
 - breeders' rights 235
 - DNA *see* DNA sequences
 - food and health care, sustainable 231–254
 - human 232, 237–239
 - ordre public* 217, 221, 234, 237, 238–239
 - plant 232, 235–237, 241
 - sui generis* system 235
 - TRIPS Agreement 235
 - see also* patents
- Biotechnology Directive (Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions) 29, 42, 51, 233–234, 256
- DNA sequences 256, 263, 264, 265, 266–267
- fundamental rights and European IP law 78
- human biotechnology 238–239
- justification and objectives of IP 31, 32
- Monsanto* case 261, 263
- see also Monsanto* case (*Monsanto v Cefetra*), EU
- patents 220, 221, 222, 246
- plant biotechnology 236–237
- restrictive licensing 250–251
- border measures, enforcement 401–402, 404
- brand image, trademarks 141, 142–143, 153
- breast cancer (BRCA1 and BRCA2 gene mutation) case (*Myriad*) 245–246, 257, 258–261, 263, 266
- broadcasters, and copyright 285
- Brown, R.S. 141, 144
- cable retransmission rights 284
- Campinos, António 441
- Central Division of Court of First Instance, Unified Patent Court 17, 18
- Centre for International Intellectual Property Studies (CEIPI) 9, 17
- Charter of Fundamental Rights of the EU *see* EU Charter (Charter of Fundamental Rights of the EU)
- Christie, Andrew 25
- civil law
 - enforcement 400–401, 404
 - unification 292–293
- CJEU *see* Court of Justice of the European Union (CJEU)
- cluttering, trademarks 126, 129–131
- coagulation factor VIII 238
- Cocteau, Jean 316–317
- coherence in construction of IP 5–23
 - absence of explicit competence of EU 6–8
 - abuse of a dominant position, criteria 13
 - common objectives 5
 - future fields of action 16–23, 24
 - progressive construction 8–14
 - transparency, achieving by 11
 - Treaty of Lisbon, 2009 14–16
- collecting societies, and copyright 284–285
- collective rights management organizations (CRMOs) 325, 326
- Common Agricultural Policy 7
- communicative diversity 108, 116
- Community Design Regulation (CDR) 27, 361, 362–363, 378
 - 'functionality' within 365
 - multiplicity of forms doctrine 366
- Community Patent Convention (CPC), 1975 65, 66
- Community Patent (CP) 65, 66
- Community Plant Variety Office (CPVO) 70
- Community Trademark Regulation (Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark) 27, 41, 45, 123, 124, 125, 334, 442
- Legal Framework of IPRs, at regional level 69, 70
- rights conferred 132, 133, 134–135, 136
- Community Trademarks (CTMs) 123, 124, 125
 - coexistence (system competition) 126, 127–129, 130

- e-business 440, 441
- and geographical indications 189, 201, 206
- history 440
- Comparative Advertising Directive (No 97/55 of 6 October 1997) 156, 170, 172, 175
- competence of European Union
 - absence of explicit competence in intellectual property 6–8
 - AETR decision 74
 - denial of competence to adopt secondary legislation in IP matters 66–67
 - double external 72
 - external 72, 73–74
 - implied powers doctrine 72, 74
 - internal 72
- competition law
 - abuse of a dominant position 13, 55–56, 96, 97, 111
 - case law
 - Associated Press et al. v United States* 109, 115
 - Bonnier Audio* 102
 - Interferon-gamma* decision 101–102
 - Microsoft Corp. v Commission* 96, 97, 104, 111, 112, 116
 - SABAM v Netlog NV* 102
 - Scarlet Extended SA v SABAM* 102
 - Tetra Pak International SA v Commission* 111
 - communicative diversity 108, 116
 - constraints on constitutionalization 104–106
 - and copyright 281–282
 - end-to-end principle of Internet 110–111
 - and European Commission 94, 96–97, 99
 - exclusions from protection 43
 - exclusive rights 100
 - and freedom of expression 96, 97, 107–115
 - and fundamental rights 103, 107
 - and General Court 104–105, 106
 - Google, case against 96, 97, 116
 - and information society 96–104
 - infrastructure theory 113–115
 - and intellectual property 94–117
 - market power 113, 117
 - microeconomic models 95
 - non-distortion, ensuring 32
 - patents 101–102
 - rigorous application rules 117
 - search engine bias 96, 97
 - structural analysis 99, 100, 102, 104, 113
 - see also* unfair competition
- Competitiveness Council 18
- complexity of EU intellectual property law 22
- Compulsory Licensing Regulation (Regulation (EC) No 816/2006 of the European Parliament and Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems) 51
- Computer Programs Directive *see* Software Directive (Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs)
- concepts of European IP law, interpretation by CJEU 13
- Conference for the European Patent (Luxembourg, 1968–1972) 63, 65
- construction of intellectual property, search for coherence *see* coherence in construction of IP
- consumers, and copyright 286–287
- control and inspection structures, geographical indications 195–197
- cooperation
 - Cooperation Fund 442–443, 446
 - enhanced 18–19, 65, 71
 - Office of Harmonization for the Internal Market (OHIM) 442–443
 - post-Second World War 62
- copying
 - authorized and unauthorized 47–48
 - levies 284
 - temporary 47, 48
 - see also* digital agenda, and copyright

- copyright
 - authors 283, 302–303
 - Berne Convention *see* Berne Convention for the Protection of Literary and Artistic Works (Berne Convention), 1886
 - ‘Better Regulation’ agenda 274–275
 - broadcasters 285
 - case law
 - Bsiri-Barbir v Haarmann & Reimer* 278
 - Coditel II* 281
 - Deutsche Grammophon v Metro SB* 287
 - Football Association Premier League Ltd v a.o. v QC Leisure; Karen Murphy v Media Protection Services Ltd* 282
 - GVL v Commission* 282
 - Kecofa v Lancôme* 278
 - Lagardère Active Broadcast* 277
 - Tiercé Ladbroke SA v Commission* 281
 - Code *see* Copyright Code, 2010
 - collecting societies 284–285
 - collective management directive proposed 29
 - Community exhaustion 279, 283
 - consumers 286–287
 - and databases 28, 345–352
 - see also* database protection and digital agenda 314–326
 - duration 55, 275
 - European Copyright Law 290–291
 - in European Union 21–22, 292–296
 - civil law, unification 292–293
 - Copyright Code 296, 297, 298–299, 300–311
 - tension between territoriality and internal market 293–296
 - territoriality 277–282, 293–296
 - unification issues 14, 15
 - exceptions to exclusive rights 50
 - exclusive rights 45
 - formalities 44
 - Green Paper of 1995 288
 - harmonization at European level 27–29, 273–291, 294–295
 - pros and cons 274–277
 - ‘ratcheting-up’ effect 275–276, 323
 - ‘upwards’ approximation 275, 276
 - internal market 287, 293–296
 - libraries and archives 285–286
 - literary and artistic creation 33, 34
 - multi-territorial licensing, promoting 289
 - neighbouring rights, term 12
 - object of IP protection 34
 - online content service providers 286
 - Online Music Recommendation (2005) 280–281, 287
 - originality requirement 37–38
 - ‘orphan works’ 295, 325
 - outlook 312–313
 - protection requirements 37–38
 - rights conferred 44–45, 46–48
 - rights holders other than authors 283–284
 - Satellite and Cable Directive (1993) 280, 285, 288, 289
 - skill and labour test 38
 - in software 28
 - Term Directive *see* Term Directive (Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights); Term Directive (Directive 2006/116/EC of 12 December 2006 on the term of protection of copyright and related rights)
 - territoriality
 - economic and cultural impact 283–287
 - EU copyright 277–282
 - and internal market 293–296
 - Online Music Recommendation (2005) 280–281, 287
 - Satellite and Cable Directive (1993) 280, 285, 288, 289
 - unification of EU law 289–291
 - Wittem Project (2002) 296–300
 - works (Copyright Code) 300–302
 - Copyright Code, 2010 296, 297, 298–299
 - assignment of rights 302
 - Chapter 1 (works) 297, 300–302

- Chapter 2 (authorship and ownership) 297–298, 302–303
- Chapter 3 (moral rights) 298, 303–304
- Chapter 4 (economic rights) 298, 304–305
- Chapter 5 (limitations) 298, 305–311
detailed analysis 307–311
coherence in construction of IP 14–15
as legislative instrument 297
and Software Directive 301, 303, 309
technical and policy approach 305–307
see also Wittem Project (2002)
- Copyright Directive (Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society), and trademark law 171, 172
- Copyright Treaty (WIPO, 1996) 36, 74, 299
- Cornish, W.R. 24, 316, 357, 414
- counterfeit and pirated goods, Community action 72–73
- Court of Appeal for the Federal Circuit (CAFC) 245, 257, 259
- Court of Justice of the European Union (CJEU) 5, 13, 28
competition law 99–100
copyright 293–294
justification and objectives of IP 32–33
object of IP protection 36, 40
patents 240, 242
rights conferred 49–50
trademarks
basics 137–138, 161
excesses 145–146, 147, 148, 149, 152
new technologies 156, 159–160
see also European Court of Justice (ECJ)
- CP4 EPSPS gene 240, 241
- creation, object of IP protection 34, 35, 37, 40
- Creative Commons Monitor project 322
- criminal enforcement of IP law 402–403, 405
- CTM *see* Community Trademark Regulation (Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark)
- Customs Regulation (Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights) 72, 73, 386
- damages 392, 428–429
- Dassonville* formula, and InfoSoc Directive 99
- Database Directive (Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases) 31, 330, 340, 341, 342
and copyright 348, 349, 350
database protection 12, 340–354
case law
British Horseracing Board Ltd v William Hill Organisation Ltd 341, 343, 344, 347, 349, 352
Fixtures Marketing Ltd rulings 341, 343, 344, 349
Football Dataco Limited decisions 28, 38, 341, 345, 346, 351, 353
Innoweb v Wegener ICT Media 345
Newspaper Licensing Agency v Meltwater 353
and copyright 28, 345–352
duration 55
harmonization 340
object of IP protection 34
obtaining data 344
originality requirement 347
recommended actions 353–354
skill, judgement and labour test 347
spin-off databases 344
substantial investment and part 344
successes 352–353
sui generis right 25, 27, 32, 340, 341, 342–345, 347, 349, 352, 353, 354
object of IP protection 39, 40

- sweat of the brow test 347
- transfers of data 344–345
- Derclaye, Estelle 340–354
- D’Erme, Roberto 394–408
- design law 355–381
 - aesthetics 356, 361, 363
 - appearance 363
 - artistic work, Duchamp perspective 369–372
 - Berne Convention 359, 360, 370
 - case law
 - Amp v Utilux* 367–369, 376
 - Grupo Promer Mon Graphic v OHIM, PepsiCo* 363, 364, 369
 - Koninklijke Philips Electronics NV v Remington Consumer Products Ltd* 366
 - Lindner Recyclingtech GmbH v Franssons Verkst der AB* 368, 369
 - Lucasfilm Ltd v Ainsworth* 355, 372–375
 - Philips Electronics NV v Remington Consumer Products* 365, 377
 - Plesner v Louis Vuitton* 371
 - Wham-O Manufacturing Co v Lincoln Industries Ltd* 374
 - Community Design Regulation *see* Community Design Regulation (CDR)
 - cumulative protection principle 378–379
 - definition of ‘design’ 355–357
 - EU regime 361–364
 - exceptions to exclusive rights 51
 - ‘functionality’ *see* ‘functionality’ design law
 - hybrid nature of a design 356–357
 - informed user 363, 364
 - national laws 360
 - object of IP protection 34
 - phantom IPRs 357–361
 - ‘product’ 362–363
 - protection requirements 38
 - rights conferred 45
 - sculpture, meaning 355, 374
 - Star Wars IV – A New Hope* (film) 372–376
 - sui generis* right 357–359, 364, 377, 380
 - TRIPS Agreement 360, 365
 - typefaces 362
 - UK Supreme Court 369–376
 - US regime 360–361
- Design Regulation *see* Community Design Regulation (CDR)
- digital agenda, and copyright 314–326
 - collective rights management organizations 325, 326
 - Copyright 1.0 320, 321, 322
 - Copyright 2.0 320, 321, 322, 324
 - creators and their public 315–318
 - Digital Agenda for Europe (2010–2020) 324–326
 - interests 319–320
 - international framework, new 322–324
 - legislative agenda, three requirements for 318–319
 - ‘long route’ and ‘short route’ 319
 - rules 320–322
 - see also* copying
- dilution, trademarks 137, 159, 176, 402
 - basics 165, 166
 - excesses 147, 149, 150, 151, 153, 154
 - extensions 142, 143, 145
 - new limitation infrastructure, need for 172, 175
 - unfair competition 332, 333–334, 335, 338
 - see also* anti-dilution protection, trademarks; free riding prevention
- distribution rights 45
- DNA sequences 253
 - Biotechnology Directive 256, 263, 264, 265, 266–267
- case law
 - Monsanto v Cefetra* 50, 242, 246, 247, 257, 259, 261–265
 - Myriad* (Association for Molecular Pathology v. U.S. Patent and Trademark Office) 245–246, 257, 258–261, 263, 266, 267
- double nature of patent protection 265–270

- isolated 258, 269
- means-plus-function claims 268
- patentability/patent scope 255–270
- recombinant DNA technology 236, 238
- dominance *see* abuse of a dominant position
- Draft Common Frame of Reference (DCFR) 292
- Draft Convention on Patents, failure in 1964 63
- Drahos, P. 223, 254
- Dreier, Thomas 292–313
- Drexler, J. 414
- droit de suite*, copyright harmonization 28
- due cause defence, trademarks 176
 - excesses 145, 148, 149, 155
 - new limitation infrastructure, need for 167, 168, 173, 174, 175
 - new technologies 158, 159
- duration of protection 12, 55–56, 275, 362
- Dusollier, Séverine 24–57
- Dyson* case (*Dyson v OHIM*) 36–37
- e-business 440–441
- ECJ *see* European Court of Justice (ECJ)
- Economic and Social Committee (EESC) 190
- economic constitution, European 16
- economic rights, Copyright Code (EU) 298, 304–305
- EEC Treaty *see* Treaty establishing the European Community (EEC Treaty), 1957
- Eisenberg, R.S. 218
- embryonic stem cells, patents concerning 42
- Enforcement Directive (Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights) 29, 294, 386, 388
 - areas of differentiation 415–416
 - Article 3 416
 - Article 7 420
 - Article 8 422, 423
- Cariforum agreement 419, 420, 423, 425
- Central America agreement 419, 420, 425, 426, 427
- Chapter II 414–416, 430
- Colombia and Peru multi-party agreement 417, 420, 421, 423, 425, 427, 430
- conclusions 430–431
- corrective measures 426–427
- damages 392, 428–429
- evidence 418–419
 - measures for preserving 419–422
- fundamental rights and European IP law 78, 92–93
- general provisions 416–418
- general structural and content comparison 414–416
- information, right of 422–423
- injunctions 427–428
- legal costs 429–430
- measures resulting from a decision on the merits of the case 426–428
- national conformity clause 415, 421, 424, 430
 - as point of departure 412–414
 - provisional and precautionary measures 423–426
- publication of decisions 430
- Recital 10 431
- South Korea agreement 419, 420, 423, 426, 430
- enforcement of intellectual property law
 - Anti-Counterfeiting Trade Agreement (ACTA), impact for 394–408
 - border measures 401–402, 404
 - checks and balances 409–431
 - civil 400–401, 404
 - criminal 402–403, 405
 - digital considerations 405
 - Enforcement Directive (2004/48/EC) *see* Enforcement Directive (Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights)
 - European Convention on Human Rights (Article 1, Protocol 1) 90–91

- European Observatory on Counterfeiting and Piracy 386–387, 392, 443
- in European Union 385–393
- in France 388, 389, 390, 391–392
- and fundamental rights 391
- geographical indications 206–210
- information, right of 389
- international law 403–405
- in Spain 390
- enhanced cooperation 18–19
 - Legal Framework of IPRs, at regional level 65, 71
- ‘Enhanced Patent System in Europe’ (Council) 72
- EPC *see* European Patent Convention (EPC)
- EPO *see* European Patent Office (EPO)
- ethical considerations, exclusions from protection 41
- EU Charter (Charter of Fundamental Rights of the EU) 57, 76
 - Article 17(2) 30, 77, 78, 103
 - and Article 17(1) 81, 82
 - examining 80–82
 - general property guarantee 80–81
 - potential impact 91
 - true scope of 89–91
 - concept of ‘possessions’ under 84
 - freedom of expression 171
 - linking to primary law 15–16
 - patents 217
- European Charter *see* EU Charter (Charter of Fundamental Rights of the EU)
- European Commission
 - Action Plan 2002 180
 - on Anti-Counterfeiting Trade Agreement 396–397
 - coherence in construction of IP 12, 15, 18–19, 20
 - and competition law 94, 96–97, 99
 - copyright 288, 289, 292
 - European Group on Ethics in Science and New Technologies 221
 - Expert Group on a Common Frame of Reference 292
 - geographical indications 180, 189
 - IPR Strategy paper, 2011 289, 291
 - Legal Framework of IPRs, at regional level 62, 63, 64, 66, 71
 - patents 216, 223
- European Convention on Human Rights (ECHR) 103
 - Article 1, Protocol 1 81–86, 89, 90–91
 - intellectual property under 86–88
 - freedom of expression 171
 - freedom of expression (Art 10) 79
- European Copyright Code *see* Copyright Code, 2010
- European Court of Human Rights 81, 82, 83, 103
- European Court of Justice (ECJ) 32, 91, 153, 294, 422
 - copyright
 - Copyright Code, Wittem Project 294, 301, 305, 307, 309
 - harmonization 276, 277, 279
 - DNA sequences 261, 263, 264, 265, 267, 269
 - fundamental rights and European IP law 78, 79
 - trademark cases 132, 133, 134, 135
 - unfair competition 332, 333, 335, 336, 338
 - see also* Court of Justice of the European Union (CJEU)
- European Intellectual Property Network (EIPIN) 24
- European Observatory on Counterfeiting and Piracy 386–387, 392, 443
- European Parliament (EP) 9–10, 18, 19, 71, 385
- European Patent Convention (EPC) 40, 62, 63, 222, 226, 233, 255, 293
 - exclusions under 36, 42
 - London Agreement on the application of Article 65 (2000) 64–65
- European Patent Litigation Agreement (EPLA) 65
- European Patent Network (EPN) 437–439
- European Patent Office (EPO) 18, 64, 255
 - biotechnology 233, 236
 - Enlarged Board of Appeal 42, 243–244, 247
 - governance challenges 222, 224

- role in fostering EU patent system 435–439
- European Patent Organisation 64
- European Union (EU)
 - Charter of *see* EU Charter (Charter of Fundamental Rights of the EU)
 - competition law 281–282
 - Convention on Human Rights *see* European Convention on Human Rights (ECHR)
 - copyright in 21–22, 292–296
 - civil law, unification 292–293
 - Community exhaustion 279, 283
 - Copyright Code 296, 297, 298–299, 300–311
 - Online Music Recommendation (2005) 280–281, 287
 - Satellite and Cable Directive (1993) 280, 285, 288, 289
 - tension between territoriality and internal market 293–296
 - territoriality 277–282, 293–296
 - unification issues 14, 15
 - design law 361–364
 - enforcement provisions 385–393
 - intervention, level of 26–29
 - jurisdiction *ratione materiae* 6
 - unfair competition as complementary to or part of EU law 333–336
- Evans, G.E. 177–212
- exceptions *see* limitations and exceptions
- exclusive rights 28, 45
 - and competition law 100
 - exceptions to 50–54
 - justification and objectives of IP 30–31
 - patents 225
 - trademarks 140, 141
- exhaustion rule
 - copyright territoriality 279, 283
 - limitations and exceptions 54–55
- exploitation rights 45, 46
 - patents 217
 - trademark law, EU 48–49, 143–144, 145
- familial breast and ovarian cancer 245
- fees, trademarks 125–126
 - level and distribution 126–127
- First Trademark Directive, 1988 334
- France, enforcement of intellectual property law 388, 389, 390, 391–392
- free riding 32, 35
 - unfair competition 333, 335, 336
- free trade agreements (FTAs) 411, 412
- freedom of art 148
- freedom of expression 79, 157
 - and competition law 96, 97, 107–115
 - Copyright Code, 2010 307
- Frischmann, B.M. 95, 113, 114
- ‘functionality’ design law 364–369
 - Amp v Utilux* (1972) 367–369, 376
 - Community Design Regulation, within 365
- function/art dichotomy, revenge of 377–381
- traditional doctrine 366–367
- fundamental rights and European IP law 75–93
 - admission of IP to category of fundamental rights 91
- case law
 - Anheuser-Busch Inc v Portugal* 87
 - Balan v Moldova* 88, 89
 - Dima v Romania* 87–88
 - Inze v Austria* 85
 - James v United Kingdom* 86
 - Laserdisken* 78–79
 - Marckx v Belgium* 85
 - Müller v Austria* 85
 - Netherlands v European Parliament and EU Council* 78
 - Pine Valley Developments Ltd v Ireland* 84–85
 - Pressos Compania Naviera SA v Belgium* 84
 - Promusicae (Productores de Musica de Espana v Telefonica de Espana SAU)* 79
 - Sporrong and Lönnroth v Sweden* 83, 84, 85
 - Stichting de Thuis kopie v Opus Supplies Deutschland GmbH* 79
- compatibility assertions 78–79
- and competition law 103, 107
- deferential approach 86, 88, 91

- deprivation of possessions/property,
 - specific rights against 82, 83, 84
- and enforcement 391
- EU Charter, Article 17(2) 77, 78
 - and Article 17(1) 81, 82
 - concept of 'possessions' under 84
 - examining 80–82
 - general property guarantee 80–81
 - potential impact 91
 - true scope of 89–91
- European Convention on Human Rights (ECHR), Article 1, Protocol 1 81–88, 89, 90–91
- European Court of Human Rights 81, 82, 83
- 'fair balance' test 85
- future property claims 85, 89
- InfoSoc Directive (Art 4(2)) 77, 78–79
- 'lawfulness'/'legality' 88, 89
- margin of appreciation 82, 85, 86, 91
- peaceful enjoyment of property,
 - general right to 83, 89, 91
- private property interests, regulation in 'general interest' 86
- regulation of the use of property,
 - specific right against 83
- enforcement provisions 206–210
- production standards/production specification 192–193
- appellation of origin 185–186
- application procedure, amendment 191–192
- case law
 - Bavaria N.V. and Bavaria Italia Srl v Bayerischer Brauerbund* 200, 204–206
 - Commission of the European Communities v Germany* 195, 198
 - Consorzio del Prosciutto di Parma v Asda Stores Ltd* 207, 208, 209
 - Federal Republic of Germany and the Kingdom of Denmark v Commission* 195
 - Germany and Denmark v Commission* 199
 - Northern Foods Plc v The Department for Environment, Food and Rural Affairs* 194
- coexistence principle 205
- control and inspection structures, amendment 195–197
- Council Regulation (EC) No 509/2006 on agricultural products and foodstuffs as traditional specialties guaranteed 178
- Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs of 20 March 2006 27, 178, 187, 203, 206
- definitions, amendment 184–188
- designation of origin, amendment of definitions 184–188
- efficiency/effectiveness 181–182
- enforcement provisions, amendment 206–210
- generic names, missed opportunity to address use of 197–201
- geographical area of production, whether missed opportunity to define 194–195
- gamma-type interferon 238
- Gehring, R. A. 300
- Geiger, Christophe 5–23, 30, 80, 394–408
- General Agreement on Tariffs and Trade (GATT) 72
- genes
 - human 238, 245, 248, 254
 - plant 237
- genetic diversity, erosion of 250
- genetic markers/tests 243, 245, 246, 253
- Geneva Act of the Hague Agreement on Industrial Design, 1999 74
- genuine use requirement, trademarks 126, 127–129
- geographical indications (GIs) 25, 32
 - amendments
 - application procedure 191–192
 - control and inspection structures 195–197
 - definitions 184–188

- GI Regulation *see* GI Regulation (Regulation 2081 On the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs), 1992
- Green Paper on Agricultural Product Quality Policy, 2008 179, 186, 190, 197, 212
- indications of geographical origin *see* indications of geographical origin (IGOs)
- missed opportunity considerations
 clarifying interrelationship of GIs and trademarks 201–206
 defining geographical area of production 194–195
 generic names, addressing use of 197–201
 restraint of trade, addressing 210–211
- object of IP protection 34
- PDOs *see* Protected Designations of Origin (PDOs)
- PGIs *see* Protected Geographical Indications (PGIs)
- product coverage, missed opportunity to extend 189–190
- product specification, amendment 192–193
- production standards, amendment 192–193
- Regulation (EEC) No 2082 on certificates of specific character for foodstuffs such as pasta, ice cream and chocolate 177
- Regulation No 479 of April 2008 on the Common Organization of the Market in Wine 181
- restraint of trade, missed opportunity to address 210–211
- simplification and codification of EU legislation for protecting 177–212
- Single Regulation *see* Single Regulation (Proposal for a Regulation on agricultural product quality schemes, 2010)
- and trademarks 201–206
- Traditional Specialities Guaranteed *see* Traditional Specialities Guaranteed (TSGs)
- TRIPs Agreement 185–186
- unity of structure and conceptual coherence 183–184
- German Anti-Piracy Law, 1990 422
- German Federal Court of Justice, trademark case law 148, 149
- GI Regulation (Regulation 2081 On the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs), 1992 177, 178, 190, 195
- enforcement provisions, amendment 206, 207
- interrelationship of GIs and trademarks, missed opportunity to clarify 202, 203 *see also* geographical indications (GIs)
- Ginsburg, Jane 303, 309
- glucosinolates (compounds with anti-cancer potential) 243
- glyphosate resistant plants 240–241
- Google, investigations of 96, 97, 116
- governance, patents 222–224, 229–230
- Griffiths, Jonathan 75–93
- Habermas, J. 115
- harmonization
 of copyright 27–29, 273–291, 294–295
 pros and cons 274–277
 ‘ratcheting-up’ effect 275–276, 323
 ‘upwards’ approximation 275, 276
- of database protection 340
- of patents 222, 223
- of trademarks 27, 32
- and unfair competition 330–332
- Harris, D.J. 83, 85
- Heinze, Christian 394–408
- Helfer, L.R. 75, 86, 89, 90, 91, 156
- Hilty, R.M. 14, 414
- human biotechnology 232
- TRIPs Agreement 237–239

- ideas, exclusion of 35–37
- implied powers doctrine 72, 74
- indications of geographical origin (IGOs) 177, 178, 179, 181, 182, 193, 211
 - enforcement provisions, amendment 207
 - interrelationship of GIs and trademarks, missed opportunity to clarify 205, 206
 - restraint of trade, missed opportunity to address 210
 - see also* geographical indications (GIs)
- industrial property, defined 183
- Infopaq* case (*Infopaq v DDF*) 47, 301, 349
 - rights conferred 99–100
- information, right of 389, 422–423
- information society
 - and competition law 96–104
 - networked 98
- Information Society (InfoSoc) Directive (Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society) 28–29, 31, 33
 - Article 2 99–100
 - and competition law 99
 - copyright 274, 276, 279
 - Copyright Code, 2010 305, 306, 310
 - and enforcement 427
 - fundamental rights and European IP law 77, 78–79
 - limitations and exceptions 54
 - rights conferred 47–48
- infrastructure theory 113–115
- infringements
 - copyright 338
 - Customs Regulation 2003 72, 73
 - safeguarding of evidence 419–420
 - trademarks 49, 148, 156
- injunctive 427–428
- INNO-tec (institute) 124
- innovation 218–220, 227–229
 - food and health care, sustainable 231–254
 - in life sciences 234–235
- Institute for Information Law (IVIR), University of Amsterdam 289, 297
- intellectual property (IP)
 - common principles/roots, search for 5, 24–57
 - competence issues *see* competence of European Union
 - construction *see* construction of intellectual property
 - enforcement provisions *see* enforcement of intellectual property law
 - and fundamental rights *see* fundamental rights and European IP law
 - justifications and objectives 30–33
 - object of protection 34–44
 - progressive construction 8–14
 - ‘proportionalization’ in law 91
 - subject-matter 34–35, 40, 41, 43
 - tree metaphor 25, 35, 37, 56, 57
 - unfair competition, whether alternative to IP law 336–339
- intellectual property rights (IPRs)
 - duration of protection 12, 55–56
 - enforcement *see* enforcement of intellectual property law
 - exclusive, exceptions for 50–54
 - fundamental, in European IP law 75–93
 - global, third generation of issues 409–412
 - investment protection 31, 32
 - limitations and exceptions 50–55
 - non-discrimination principle 40
 - phantom 357–361
 - at regional level *see* Legal Framework of IPRs, at regional level
 - rights conferred
 - copyright 44–45, 46–48
 - design law 45
 - Football Association Premier League* case 46, 48
 - Infopaq* case (*Infopaq v DDF*) 47, 99–100, 301, 349
 - patents 45, 49–50
 - scope of protection 44–50

- SGAE case (SGAE v Rafael Hoteles)* 46
 trademarks 46, 48–49, 132–135
 interferon 238
 Intergovernmental Working Parties 62, 63
 internal market, copyright 287, 293–296
 see also Office of Harmonization for the Internal Market (Trademarks and Designs) (OHIM)
 International Convention for the Protection of New Varieties of Plants (UPOV Convention), 1961 235
 International Trademark Association (INTA) 203
 Internet
 end-to-end principle 110–111
 extending Satellite Broadcasting Model to 288
 inventions 224
 see also Biotechnology Directive (Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions); patents
 investment protection 31, 32
 object of IP protection 35, 37, 39
 IP *see* intellectual property (IP)
 IPRED *see* Enforcement Directive (Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights)
 IPRs *see* intellectual property rights (IPRs)

 Jääskinen, N. (AG) 157, 158
 Jacobs, AG 334
 Jaeger, Thomas 394–408

 Kamperman Sanders, Anselm 329–339
 keyword advertising 156, 157, 160
 Knaak, Roland 124
 know-how 389

 Koopman, J. 8
 Krauss, Jan 255–270
 Krugmann, Paul 320
 Kuhlen, R. 300, 301, 311
 Kur, Annette 25, 123–136, 229, 414

 Langinier, C. 197
 legal certainty, competition law 100
 Legal Framework of IPRs, at regional level 61–74
 and Commission 62, 63, 64, 66, 71
 European Patent Convention *see* European Patent Convention (EPC)
 Hague Convention, 1947 62
 Intergovernmental Working Parties 62, 63
 Treaty on the Functioning of the European Union (TFEU), 2010 62, 67, 71, 73
 Working Parties 62, 63, 65
 Lemley, M.A. 110–111
 lending and rental rights *see* rental and lending rights
 Lessig, L. 110–111
 libraries, and copyright 285–286
 licensing
 compulsory 51, 101, 254, 342–343
 copyright territoriality 284
 multi-territorial, promoting 289
 refusal, as abuse of dominant position 13
 restrictive 247–248, 250–252
 limitations and exceptions 50–55
 access to knowledge or essential resources 53
 competition law 99, 100, 101
 competition or promoting innovation objective 52
 de minimis exceptions 53–54
 exhaustion rule 54–55
 necessary or incidental uses 52
 overlapping rights 51–52
 private use 52
 stand-alone justification 51
 trademarks 135–136
 transformative uses 52–53
 Lisbon Strategy, 2000 180
 Lisbon Treaty *see* Treaty of Lisbon, 2007

- literary and artistic creation, copyright
 - 33, 34
 - rights conferred 45
 - see also* Berne Convention for the Protection of Literary and Artistic Works (Berne Convention), 1886
- London Agreement on the application of Article 65 EPC (2000) 64–65
- Lutz, Raimond 435–439
- Lycopersicon esculentum* (tomato subspecies) 243

- Maastricht Treaty *see* Treaty of Maastricht, 1992
- Machlup, Fritz 225
- Marchenay, P. 184, 187
- margin of appreciation, fundamental rights 82, 85, 86, 91
- market power, competition law 113, 117
 - see also* abuse of a dominant position
- Martin, David 11
- Matulionyte, Rita 394–408
- Max Planck Institute for Intellectual Property and Competition Law (MPI) 14, 27, 53
 - trademarks 124, 136
- McDonagh, Luke 75–93
- Meller, M.A. 218
- Metzger, Axel 394–408
- microeconomic models, competition law 95
- Milka insignia, trademark case 148
- misappropriation, protection against 330
- Misleading Advertising Directive (No 84/450 of 10 September 1984) 156
- monopolistic behaviour, patents 249
- Monsanto* case (*Monsanto v Cefetra*), EU 50, 240–242, 246, 247, 257, 259, 261–265
- morality issues
 - biotechnology 234, 237, 239
 - exclusions from protection 41, 42
 - moral rights (Copyright Code) 298, 303–304
 - patents 220–222
- Motion Picture Association (MPA) 91–92
- multilateral initiatives 411
- multiplicity of forms doctrine, design law 366
- Munich Convention, 1973 5, 8, 29, 64
- mutations, gene 245
- Mylly, Thomas 16
- Mylly, Tuomas 94–117
- Myriad* case (*Association for Molecular Pathology v. U.S. Patent and Trademark Office*) 245–246, 257, 258–261, 263, 266, 267

- national conformity clause, enforcement 415, 421, 424, 430
- neighbouring rights, term 12
- new public, transmission to 46–47
- non-discrimination principle, IPRs 40
- novelty, protection requirements 37, 38, 39

- object of IP protection
 - creation 34, 35, 37, 40
 - distinctiveness requirement, trademarks 38, 39
 - exclusions from protection 41–43
 - formal requirements 43–44
 - ideas, exclusion of 35–37
 - novelty requirements 37, 38, 39
 - overprotection concern 40
 - protection requirements 37–41
 - subject-matter of intellectual property 34–35, 40, 41
 - see also* protection of intellectual property
- Office of Harmonization for the Internal Market (Trade Marks and Designs) (OHIM) 70
 - cooperation 442–443
 - e-business 440–441
 - employment and income 441
 - establishment, 1994 440
 - ‘immoral’ marks 79
 - network, need for 446
 - new responsibilities 443–444
 - review, need for 441–442
 - Strategic Plan 444–446
 - trademarks 123, 124
 - coexistence (system competition) 125, 126, 127, 129, 130–131

- OHIM *see* Office of Harmonization for the Internal Market (Trade Marks and Designs) (OHIM)
- Ohly, Ansgar 124
- online content service providers, and copyright 286
- Online Music Recommendation (2005), EU copyright 280–281, 287
- open source software 320
- ordre public* 217, 221, 234, 237, 238–239
- originality requirement 37–38, 347
- ‘orphan works’ 295, 325
- Papal States Edict, 1833 358
- Paris Convention for the Protection of Industrial Property, 1883 29, 41, 61, 183
- design law 358, 360
- trademark rights under 134–135
- unfair competition 332, 336, 339
- parody, trademarks 53, 148, 155, 157, 168, 176
- new limitation infrastructure, need for 170–171, 172, 174
- passing off, tort of 332, 333
- Patent Act, US 256, 257, 266
- Patent Cooperation Treaty (PCT), 1970 63
- patents
- administration of system 219–220
 - balanced system 215, 255–270
 - Biotech Directive *see* Biotechnology Directive (Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions)
 - case law
 - Bilski v Kappos* 256, 258
 - BRCA1 and BRCA2 breast cancer case (*Myriad*) 245–246, 257, 258–261, 263, 266, 267
 - Diamond v. Chakrabarty* 258, 259
 - Mayo Collaborative Servs. v. Prometheus Labs., Inc* 257, 270
 - Monsanto* case (*Monsanto v. Cefetra*) 50, 240–242, 246, 247, 257, 259, 261–265
 - Tomato and Broccoli cases 243–245, 246, 247
 - Vaeck, In re* 269
 - challenges 218–225
 - governance 222–224
 - innovation 218–220, 227–229
 - morality 220–222
 - non-economic 220–222
 - clarifications/definitions 215
 - ‘clearing houses’ 228, 253
 - competition law 101–102
 - constructing efficient and balanced EU system 215–230
 - current legislation 232–239
 - diagnostic, therapeutic and surgical methods: exclusion from patentability 239
 - DNA sequences *see* DNA sequences
 - efficient system 215, 216, 255–270
 - embryonic stem cells, concerning 42
 - EU interventions 16–18, 29
 - Europe 2020 objectives 254
 - European Patent Convention *see* European Patent Convention (EPC)
 - European Patent Network 437–439
 - European Patent Office *see* European Patent Office (EPO)
 - exceptions to exclusive rights 50–51
 - exclusivity model 219
 - food and health care, sustainable 232–239
 - genetic diversity, erosion of 250
 - governance 222–224, 229–230
 - granting of 217, 222
 - hindering effects of 246–250
 - inclusive, and smart innovation 231–254
 - innovation challenge 218–220, 227–229
 - institutions/PTOs 217, 224, 227
 - Intergovernmental Working Party 63
 - invention, usefulness of 39
 - Legal Framework 63–65
 - mission statement 226–227
 - monopolistic behaviour 249
 - ‘muddling through’ 225–230
 - object of IP protection 34, 39
 - ‘patent pools’ 228

- patent system
 - defined 215
 - European 215, 223, 230
 - as value-neutral 217, 220
- 'patent thickets' 218, 224, 248–249, 250, 252–254
- Proposal for a Council Regulation on the Community Patent 229
- 'raising the bar' 224, 227
- reconceptualising 250–254
- restrictive licensing 247–248, 250–252
- rights conferred 45, 49–50
- STOA Report 226, 227, 229
- traditional starting points 216–217
- TRIPS Agreement 227, 232–233
- unitary EU patent system, creating 435–437
 - see also* biotechnology;
 - Biotechnology Directive (Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions)
- PDOs *see* Protected Designations of Origin (PDOs)
- peaceful enjoyment of property, general right to 83, 89, 91
- Performances and Phonograms Treaty (WIPO, 1996) 74
- performers, related rights of 34, 39–40
- Peukert, A. 80, 91
- PGIs *see* Protected Geographical Indications (PGIs)
- Phillips, Jeremy 377
- plant biotechnology 232, 235–237
 - patent types 241
- plant variety rights 25, 31
 - Legal Framework of IPRs, at regional level 70
 - object of IP protection 34, 38
- Plant Variety Rights Regulation (Council Regulation (EC) No 2100/94 of 27 July 1994 December 2001 on Community designs) 27
- Posner, Richard A. 337
- Prager, F. 379
- press, free 107
- Promusicae (Productores de Musica de Espana v Telefonica de Espana SAU)* 79, 102
- Protected Designations of Origin (PDOs) 177, 180, 183, 184, 189, 191, 194, 195, 198, 211, 212
 - amendment of definitions 186–187
 - enforcement provisions, amendment 207, 209
 - interrelationship of GIs and trademarks, missed opportunity to clarify 201, 205
 - see also* geographical indications (GIs)
- Protected Geographical Indications (PGIs) 177, 180–181, 183, 189, 194, 195, 211, 212
 - amendment of definitions 184, 185, 186, 187, 188
 - enforcement provisions, amendment 207, 209
 - generic names, missed opportunity to address use of 198, 200
 - interrelationship of GIs and trademarks, missed opportunity to clarify 201, 205
 - production standards and product specification, amendment 192, 193
 - see also* geographical indications (GIs)
- protection of intellectual property
 - anti-dilution protection, trademarks 145, 146, 149, 150, 152, 155, 156
 - database protection 340–354
 - defensive (trademarks) 138, 143 and EU Charter 15
 - exclusions from 41–43
 - extended protection, trademarks 133–134
 - formal requirements 43–44
 - free riding prevention 32, 35
 - geographical indications 177–212
 - investment protection 31, 32, 35
 - justification 26
 - patent protection of DNA sequences, double nature 265–270
 - requirements 37–41, 57
 - rights conferred 44–50

- scope of 44–50
- trademarks 32
- see also* object of IP protection
- Prussian Law, 1837 359
- public communication, rights to control 45, 46–47
- public domain, absence as a common principle in IP law 56
- public order considerations, exclusions from protection 41, 42
- public sector information 325
- Quality Schemes legislation 189
- Ramalho, A. 11
- Raynard, Jacques 385–393
- Redding, Vivian 290
- reform of IP regime 16–23, 24
- Reform Treaty *see* Treaty of Lisbon, 2009
- regional level, IPRs at *see* Legal Framework of IPRs, at regional level
- related rights
 - copyright harmonization 28
 - European Convention on Human Rights (Article 1, Protocol 1) 83
 - of performers 34, 39–40
- Rental and Lending Directive (Directive 2006/115/EC of the European Parliament and Council of 12 December 2006 on rental and lending right) 28, 33
- rental and lending rights, copyright harmonization 28
- reproduction right 44–45, 46, 99
 - temporary copying 47, 48
- Resale Right Directive (Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art) 31
- resources, infrastructure theory 113–115
- restraint of trade, and geographical indications 210–211
- Ricolfi, Marco 314–326
- Rilke, Rainer Maria 148
- Roundup Ready* herbicide 240–241, 262
- rule of law paradigm, fundamental rights 89
- Ruse-Khan, Henning Grosse 394–408
- saisie de contrefaçon* 420
- SAS case (*SAS Institute Inc. v World Programming Ltd*) 28
- Satellite and Cable Directive (1993), EU copyright 280, 285, 288, 289
- Schneider, I. 223
- Schovsbo, Jens 215–230
- Schwartz, Hillel 356
- Science and Technology Options Assessment (STOA) Report 226, 227, 229
- Scordamaglia, Vincenzo 61–74
- search engine bias 96, 97
- Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS) 249, 252
- self-dilution 143
- Semiconductor Products Directive (Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products) 27
- semiconductors, protection of 26, 27
- Senftleben, Martin 137–176
- Seuba, Xavier 409–431
- signs or denominations, object of IP protection 34–35, 40
- Single European Act, 1986 67
- Single Regulation (Proposal for a Regulation on agricultural product quality schemes, 2010) 180, 181, 182, 189, 191, 193, 194, 211, 212
 - amendment of definitions 185, 187
 - control and inspection structures, amendment 196, 197
 - Explanatory Memorandum 208
 - generic names, missed opportunity to address use of 197, 198, 199, 200
 - interrelationship of GIs and trademarks, missed opportunity to clarify 201, 205
 - unity of structure and conceptual coherence 183–184
 - see also* geographical indications (GIs)

- skill and labour test, copyright 38
- small- and medium-sized enterprises (SMEs) 377
- social contract 250
- social sharing 319
- Software Directive (Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs) 31
- and Copyright Code 301, 303, 309
- ideas, exclusion of 35–36
- software protection 28, 41
- Softwarova* case (*Bezpečnostní softwarová asociace*) 28, 46
- Soy Meal *Monsanto* case *see Monsanto* case (*Monsanto v Cefetra*)
- Spain, enforcement of intellectual property law in 390
- Star Wars IV – A New Hope* (film) 372–376
- Strategy for the Enforcement of Intellectual Property Rights in Third Countries* (DG Trade) 413
- subject-matter of intellectual property 34–35, 40, 41, 43
- sui generis* rights
- database protection 25, 27, 32, 340, 341, 342–345, 353, 354
- and copyright 347, 349, 352
- object of IP protection 39, 40
- design law 357–359, 364, 377, 380
- duration of protection 55
- Sullivan, Louis 364
- Suthersanen, Uma 355–381
- Sweet, Robert W. (Judge) 245
- Takenaka, Toshiko 255–270
- Term Directive (Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights) 28, 275, 301
- Term Directive (Directive 2006/116/EC of 12 December 2006 on the term of protection of copyright and related rights) 301
- territoriality, copyright 277–282
- Community exhaustion 279
- economic and cultural impact 283–287
- and internal market 293–296
- Online Music Recommendation (2005) 280–281, 287
- Satellite and Cable Directive (1993) 280, 285, 288, 289
- TFEU *see* Treaty on the Functioning of the European Union (TFEU), 2010
- tissue-type plasminogen activator (t-PA) 238
- TMD *see* Trademark Directive (Council Directive No. 89/104/EEC, to approximate the laws of the Member States relating to trade marks)
- Tomato and Broccoli cases, sustainable food and health care 243–245, 246, 247
- Trademark Directive (Council Directive No. 89/104/EEC to approximate the laws of the Member States relating to trade marks) 45, 123, 125, 139, 176
- basics 161, 163, 164, 165, 167
- excesses 145, 153–154, 156
- new limitation infrastructure, need for 167, 168, 169, 174, 175
- new technologies 157, 161
- Recital 11 153–154
- rights conferred 132, 133, 136
- unfair competition 338
- trademark law, EU
- adverse effect criterion 154, 155
- anti-dilution protection 145, 146, 149, 150, 152, 155, 156
- basics 137–140, 161–167
- case law
- Adidas/Fitnessworld* 151
- BergSpechte/Trekking* 162, 168
- BMW/Deenik* 132
- Claeryn/Klarein* 147
- Davidoff/Gofkid* 133
- Dyson (Dyson v OHIM)* 36–37
- General Motors v Yplon* ('Chevy') 150
- Google France and Google/Louis Vuitton* 132, 157, 159–160, 161, 162, 163, 164–165, 168
- Intel/CPM* 151, 152, 167

- Interfloral/Marks & Spencer*
158–159, 161, 166, 173
- Leno Merken/Hagelkruis Beheer B.V. (ONEL/OMEL)* 128
- L'Oréal/Bellure* 132, 152–153, 156, 158, 159, 167, 170, 176, 335
- L'Oréal/eBay* 157, 160, 161, 164, 165
- Moseley v V Secret Catalogue* 172
- O2/Hutchison* 170
- Opel/Autec* 132
- Portakabin/Primakabin* 168
- Puma/Sabel* 139
- Comparative Advertising Directive
156, 170, 172, 175
- double identity 49, 138–139
- 'double identity clause' 133
- elasticity test 149, 151, 152, 153, 155, 157, 159, 164
- essential origin function 138
- excesses 145–156
- exploitation rights 48–49, 143–144, 145
- extensions 140–145
- keyword advertising 156, 157, 160, 161
- new limitation infrastructure, need for 167–175
- technologies, new: adapting to 156–161
- see also* unfair competition
- Trademark Study (Study) 124, 125, 129, 131, 136
- rights conferred 133, 135
- trademarks
- advertising, investing in 141
 - brand image 141, 142–143, 153
 - coexistence (system competition)
 - cluttering 126, 129–131
 - fees 125–127
 - genuine use 126, 127–129
 - issues 125–126
 - Joint Statement (1993) 127, 128
- Community Trademarks *see*
- Community Trademark Regulation (Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark);
 - Community Trademarks (CTMs)
 - 'deadwood' 129, 130
 - dilution *see* dilution, trademarks
 - Directive *see* Trademark Directive (Council Directive No. 89/104/EEC, to approximate the laws of the Member States relating to trade marks)
 - distinctiveness 38, 39, 140
 - due cause defence 176
 - excesses 145, 148, 149, 155
 - new limitation infrastructure, need for 167, 168, 173, 174, 175
 - new technologies 158, 159
 - duration of protection 55
 - evaluation of EU system 123–136
 - exceptions to exclusive rights 51
 - exclusive rights 140, 141
 - fit for purpose test 38–39
 - and geographical indications 201–206
 - harmonization of 27
 - infringements 49, 148, 156
 - Intergovernmental Working Party 63
 - legal issues *see* trademark law, EU
 - lifestyle messages 141, 142, 144, 153
 - likelihood of confusion 138–139
 - and extended protection 133–134, 140, 141, 143
 - object of IP protection 32, 38–39
 - parody 53, 148, 155, 157, 168, 176
 - new limitation infrastructure, need for 170–171, 172, 174
 - protection reflex 141–142
 - referential and decorative 157
 - registration 129, 130

Regulation *see* Community Trademark Regulation (Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark)

 - with reputation 134–135, 150, 151, 166, 334

rights conferred 45, 46, 48–49

 - likelihood of confusion 133–134, 138–139, 140
 - limitations and exceptions 135–136
 - marks with reputation/well-known 134–135, 150, 151, 166

- Paris Convention, Article 6bis
134–135
‘use as a mark’ and trademark
functions 132–133
subject-matter of IP 35
TRIPS Agreement 133, 134, 135,
139, 165
and unfair competition 333
‘watchdog-function’ of register 130
- Traditional Specialities Guaranteed
(TSGs) 177–178, 181
product coverage, missed opportunity
to extend 189
unity of structure and conceptual
coherence 183–184
- Treaty establishing the European
Community (EEC Treaty), 1957
Article 36 62
Article 37 7
Article 47(2) 7
Article 55 7
Article 95 6–7
Article 100 67
Article 100A 68–69
Article 235 69
Article 295 6, 62
Article 308 6
construction of intellectual property,
search for coherence 6–7
Legal Framework of IPRs, at regional
level 62, 66, 67, 68, 69
mandatory requirements exemption
331
- Treaty of Amsterdam, 1997 67
- Treaty of Lisbon, 2007 16, 67, 71
Article 118 14
copyright 290
and fundamental rights 76, 77
new perspectives 14–16
patents 216–217, 225
- Treaty of Maastricht (Treaty on
European Union), 1992 7, 67
Article 1 5
Article 5(1) 6
Article 5(2) 6
Article 6(1) 76
Article 6(3) 76–77
- Treaty of Rome, 1957 *see* Treaty
establishing the European
Community (ECT), 1957
- Treaty on the European Union (TEU) *see*
Treaty of Maastricht (Treaty on
European Union), 1992
- Treaty on the Functioning of the
European Union (TFEU), 2010 5
Article 4 67
Article 36 62
Article 43 7
Article 83(2) 11
Article 102 105
Article 118 71
Article 207 73
Article 345 6, 62
competition law 281
construction of intellectual property,
search for coherence 5, 7, 11
copyright 290, 291, 295
Legal Framework of IPRs, at regional
level 62, 67, 71, 73
patents 216, 228
unfair competition 331
tree metaphor 25, 35, 37, 56, 57
- TRIPS Agreement *see* Agreement on
Trade Related Aspects of
Intellectual Property Rights
(TRIPS Agreement)
- Tritton, G. 5
- unfair competition 26, 329–339
case law
*BV Industrie Diensten Groep v
J.A. Beele
Handelsgemeenschap*
330–331
Intel v Intelmark 335
*Mogul Steamship Co. v McGregor
Gow & Co* 337
Odol 338
*Wagamama v City Centre
Restaurants* 334
as complementary to or part of EU
law 333–336
free riding 333, 335, 336
likelihood of association 334–335
passing off, tort of 332, 333
whether alternative to IP law
336–339
whether harmonization of law
330–332
see also competition law; trademarks

- unification issues, copyright 289–291
 - civil law 292–293
- Unified Patent Court, Central Division of Court of First Instance 17, 18
- Uniform Benelux Design Act, 1975 333
- Uniform Benelux Trademarks Act, 1971 333
- United States (US)
 - breast cancer (BRCA1 and BRCA2 gene mutation) case (*Myriad*) 245–246, 257, 258–261, 263, 266, 267
 - and competition law 94
 - Court of Appeal for the Federal Circuit (CAFC) 245, 257, 259
 - design regime 360–361
 - Patent Act 256, 257, 266
 - Patent and Trademark Office (USPTO) 256, 257, 258, 259
- Universal Declaration of Human Rights, 1948, Article 27 92
- University of Amsterdam, Institute for Information Law (IVIR) 289, 297
- value neutrality, patents 217, 220
- Van Overwalle, Geertrui 218, 231–254
- vertical search services 96
- Vivant, Michel 447–449
- Waller, Weber 113
- WIPO *see* World Intellectual Property Organization (WIPO)
- Wittem Project (2002) 296–300
 - Advisory Board 298
 - Drafting Committee 297, 299, 302, 305, 310
 - existing legal framework 298–300
 - methodology 297–298
 - Wittem Group 304, 305–306
 - see also* Copyright Code, 2010
- Working Parties, Legal Framework of IPRs 62, 63, 65
- World Intellectual Property Organization (WIPO) 72
 - Copyright Treaty, 1996 36, 74, 299
 - Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks 165
 - Performances and Phonograms Treaty, 1996 74
 - Recommendations, trademarks 134
- World Trade Organization (WTO)
 - accession compromises 411
 - Panel 141–142, 178

