Index

3-D marks, protection 93–4

abuse of dominant position
see competition
Alibaba 24, 26, 32–3, 38–40
Alice Corp. v. CLS Bank International 182
AliExpress 24
Anti-Counterfeiting Trade Agreement (ACTA) 162
anti-monopoly laws
see competition
Antigua 173
Apple 31–2, 38
Apple v. Motorola 81–2
Arora, A. 11–12
Association of Molecular Pathology v. Myriad 181
Australia 6, 176

Baidu 26
Barra, Hugo 31–2
bianli (convenience) 28–9
biotechnical inventions, definitions 60–61
Björnekulla v. Procordia Food 134
Bransteter, L. 11, 14
Brazil 5–6, 172–3
Bronner v. Mediaprint Zeitungs 75

Canada 177
Chen, Y. 10
China
anti-competition regime
development 71–2
essential facilities doctrine 71–4, 76–8
licences, refusal to grant 72–6, 78–89
counterfeit products
control development 38–41
fashion industry 141–5, 156
trends 35–7, 42
cybercitizens
characteristics 33–5, 42
innovation role 34–8
geographical indications
fashion industry, and 141–5, 156
innovation
affordability 36–7
convenience 28–31
cultural influences 34, 36
influences on 23, 27–33
minimalism, and 29
multi-functionality 28–9
need seeker model 31–2
‘perfection,’ role of 27–33
shanzhai 35–6
style 29–30
trends 22–3
user design influences 32–3, 36, 40
intellectual property, generally
copyright enforcement regime 166
policy development 38–43, 163
protection levels 163
investment trends 40–41
patents
standard-essential patent (SEP), holder duties 72, 78–80
trends 5–6
use trends 183
Taobao 24–30, 32–3, 35, 38–40
WeChat 25–32, 35, 38–40
Xiaomi 26–7, 29–32, 38, 40
China Enforcement dispute (WTO) 166, 171
Cohen, F. 46–7
Cohen, Julie 23, 36
Community Trade Mark 100
comparative law, principles 46

competition
China, in 70–87
development 71–2
essential facilities doctrine 71–4, 76–8
licences, refusal to grant 72–6, 78–9
efficiency conflicts with IPR 70–71
essential facilities doctrine 71–8
Chinese interpretation 71–2, 76–8
EU interpretation 74–8
F/RAND commitments, and 79–87
principle 72–3
US interpretation 73–4, 76–7
exclusive rights, impacts of 120
generic marks/ signs/ GIs, and 120, 127–9, 146
nationalism, and 152–4
taste, and 149
influences on 2
licences, refusal to grant 72–6, 78–9
new product requirement 76–7
secondary market requirement 75–7
unfair competition rules 101–2,
112–13, 117–18
compulsory licensing
public health obligations, and 170

copyright
enforcement 160–61, 163–4
criminal enforcement provisions 166, 168
industrial designs, and
applied art 104–8
EU approach 107–8, 115–16
law overlaps 95–7, 102–3, 114–16
originality 106–8
Scandinavian approach 104–7
policy development
copyright avoidance trend 185
criticisms 163–5
digital world challenges 185
free trade agreements, and 164–5
over-protection, and 185–6
post TRIPS 164–6
TRIPS Agreement 163–6
purpose 62–3
rights management information, and 165
strict necessity principle 62–8
balance of interests 63–4
direct violation, justification for 65–6
exceptions and exclusions 63–6
freedom of expression 50, 65–6
images, treatment of 64
margin of appreciation 65–6
temporary acts of reproduction 65
work, definition of 66–8
technological protection measures, and 165
three step test 165
thresholds 96, 164–5
trade mark law overlaps 66–7,
116–17, 167, 184
work, definition of 66–8, 95–7, 117
applied art 104–8
World Copyright Treaty 165
counterfeit products
China, in 35–7, 42
fashion industry, in 141–5, 156
international trade agreements 162
place or process counterfeiting 141–5
cumulation principle 102–3

cumulative list of referencing
Dangdag.com 28
data linkages 17
Delgado, M. 13
Demuijnck, Geert 42
Denmark
design protection law
chair designs, as trade marks 90, 92–3
copyright protection, and 95–6,
105–6
Egg chair 88–90
unfair competition rules 101, 112–13
developing countries
GIs, development incentives 179
TRIPS Agreement impacts on 174–6
diaosi (cybercitizens) 33–8, 42
dispute settlement
incentives 178
trade agreement influences on 171–3
## Index

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doha Declaration on Public Health</td>
<td>169–70</td>
</tr>
<tr>
<td>Dr Who (TV show)</td>
<td>141, 144</td>
</tr>
<tr>
<td>Drahos, Peter</td>
<td>42, 46-7, 179</td>
</tr>
<tr>
<td>droit d'auteur</td>
<td>48-9</td>
</tr>
<tr>
<td>eBay</td>
<td>28, 38</td>
</tr>
<tr>
<td>Egg chair</td>
<td>88–90, 111, 114–15</td>
</tr>
<tr>
<td>Eli Lilly</td>
<td>177</td>
</tr>
<tr>
<td>emergency provisions</td>
<td>169–70</td>
</tr>
<tr>
<td>Ericsson</td>
<td>40</td>
</tr>
<tr>
<td>essential facilities doctrine</td>
<td></td>
</tr>
<tr>
<td>Chinese interpretation</td>
<td>71–2, 76–8</td>
</tr>
<tr>
<td>EU interpretation</td>
<td>74–8</td>
</tr>
<tr>
<td>F/RAND commitments, and</td>
<td>79–87</td>
</tr>
<tr>
<td>no injunction rule</td>
<td>86–7</td>
</tr>
<tr>
<td>principle</td>
<td>72–3</td>
</tr>
<tr>
<td>US interpretation</td>
<td>73–4, 76–7</td>
</tr>
<tr>
<td>willing licensee test</td>
<td>84–7</td>
</tr>
<tr>
<td>European Union</td>
<td></td>
</tr>
<tr>
<td>essential facilities doctrine</td>
<td>74–8</td>
</tr>
<tr>
<td>geographical indications</td>
<td>150–52,</td>
</tr>
<tr>
<td>155–7, 167</td>
<td></td>
</tr>
<tr>
<td>industrial designs protection</td>
<td></td>
</tr>
<tr>
<td>copyright, and 107–8, 115–16</td>
<td></td>
</tr>
<tr>
<td>harmonization</td>
<td>97–8, 116–18</td>
</tr>
<tr>
<td>trade agreement policy development</td>
<td>176</td>
</tr>
<tr>
<td>traditional knowledge</td>
<td>150–52, 155–6</td>
</tr>
<tr>
<td>European Union Intellectual Property Office (EUIPO)</td>
<td>120</td>
</tr>
<tr>
<td>F/RAND commitments</td>
<td>79–87</td>
</tr>
<tr>
<td>interpretation</td>
<td>81–3</td>
</tr>
<tr>
<td>Facebook</td>
<td>25, 29, 38</td>
</tr>
<tr>
<td>fashion industry</td>
<td></td>
</tr>
<tr>
<td>competition and nationalism</td>
<td>152–4</td>
</tr>
<tr>
<td>counterfeit products</td>
<td>141–5, 156</td>
</tr>
<tr>
<td>creator identity</td>
<td>153–4</td>
</tr>
<tr>
<td>cultural and traditional values</td>
<td>141–5, 147</td>
</tr>
<tr>
<td>digital place</td>
<td>147</td>
</tr>
<tr>
<td>fan theory, and 143–5</td>
<td></td>
</tr>
<tr>
<td>geographical indications, policy development</td>
<td>156–8</td>
</tr>
<tr>
<td>identity, and 141, 147</td>
<td></td>
</tr>
<tr>
<td>social place of 141</td>
<td></td>
</tr>
<tr>
<td>taste, and 149</td>
<td></td>
</tr>
<tr>
<td>field of technology dominance</td>
<td>160</td>
</tr>
<tr>
<td>Flos v. Semeraro Casa e Famiglia</td>
<td>97, 114</td>
</tr>
<tr>
<td>free trade agreements</td>
<td></td>
</tr>
<tr>
<td>see also TRIPS Agreement 1994</td>
<td></td>
</tr>
<tr>
<td>adoption incentives</td>
<td>178</td>
</tr>
<tr>
<td>copyright protection thresholds</td>
<td>164–5</td>
</tr>
<tr>
<td>development trends</td>
<td>162</td>
</tr>
<tr>
<td>dispute settlement proceedings</td>
<td>171–2</td>
</tr>
<tr>
<td>patent policy developments</td>
<td>168</td>
</tr>
<tr>
<td>technological protection measures</td>
<td>165</td>
</tr>
<tr>
<td>trade secrets protection, and</td>
<td>166</td>
</tr>
<tr>
<td>freedom of expression</td>
<td>50, 65–6</td>
</tr>
<tr>
<td>gene patents</td>
<td>60–62, 181</td>
</tr>
<tr>
<td>generic marks/signs</td>
<td></td>
</tr>
<tr>
<td>challenges</td>
<td>129–30</td>
</tr>
<tr>
<td>commercial operator perception</td>
<td>133–4, 137</td>
</tr>
<tr>
<td>competition, and 127–9, 146</td>
<td></td>
</tr>
<tr>
<td>consumer perception</td>
<td>133–5, 137</td>
</tr>
<tr>
<td>consumer right to use</td>
<td>127–8</td>
</tr>
<tr>
<td>ECJ interpretation</td>
<td>132–3</td>
</tr>
<tr>
<td>Björnekulla v. Procordia Food</td>
<td>134</td>
</tr>
<tr>
<td>Kornspitz Company v. Pfahnl Backmittel</td>
<td>135–6</td>
</tr>
<tr>
<td>inactivity, and 125–6, 136</td>
<td></td>
</tr>
<tr>
<td>market interests, and 123, 127, 132</td>
<td></td>
</tr>
<tr>
<td>new product without common name, and 130–31</td>
<td></td>
</tr>
<tr>
<td>personal name of producer, and</td>
<td>130–32</td>
</tr>
<tr>
<td>protection by continued activity</td>
<td>126–9, 136–7</td>
</tr>
<tr>
<td>protection exclusions</td>
<td>123–6</td>
</tr>
<tr>
<td>voluntary abandonment</td>
<td>131</td>
</tr>
<tr>
<td>geographical indications</td>
<td></td>
</tr>
<tr>
<td>development</td>
<td>122–3</td>
</tr>
<tr>
<td>developing countries, in 179</td>
<td></td>
</tr>
<tr>
<td>EU policy 150–52, 155–7, 167</td>
<td></td>
</tr>
<tr>
<td>incentives</td>
<td>179</td>
</tr>
<tr>
<td>US policy 167</td>
<td></td>
</tr>
<tr>
<td>exclusive rights</td>
<td></td>
</tr>
<tr>
<td>generic signs</td>
<td>123–7</td>
</tr>
</tbody>
</table>
market interests, and 123, 127, 132
purpose 119–20
value over time 120–22
identification
digital products 140, 147–8
fashion, and 141–5, 146, 153–4
relationships 138–9, 147–8
international cooperation 141–5, 156
know-how, protection of 167
non-agricultural GIs
community sustainability, and 155
competition, and 152–4
EU policy 150–52, 155–7, 167
extension to, importance 150
fashion industry, and 141–3, 147–9, 152–4, 156–8
protected designations of origin (PDO) 155
protected geographical indications (PGI) 155
traditional knowledge, and 154–7
place, interpretation
cultural identity, and 141–3, 147–9
digital place 140, 147–8
focus for identity, as 151–2
inimitability of place 148
nationalism, and 152–4
perceptions of 140–41
place as tool 147–8
social place, and 140–41, 146
process, protection of 141–6
property, interpretation as 139, 147–8
taste, role of 149
Ginarte, J.C. 4–7
globalisation
intellectual property development, and 185–6
GP Index 4–7, 9
Harris Tweed 141–5
Hecht v. Pro-Football 73
Huawei 39–40
Huawei Technologies v. ZTE 84
Hungary 5, 7

IMS Health v NDC Health Corp 75, 77
India 5–6
industrial designs protection
copyright, and 95–7, 102–3
applied art 104–8
EU approach 107–8, 115–16
law overlaps 95–7, 102–3, 114–16
originality 106–8
Scandinavian approach 104–7
development
generally 114–15
regime overlaps 95–7, 102–3, 114–17
Scandinavia, in 89–94, 97–8, 114–15
Egg chair 88–9, 111, 114–15
EU harmonization 97–8, 116–18
imitation, and 101–2, 106, 112–13
limitations 97–8
trade marks, and 99–100
distinctiveness 99–100, 102, 111, 113
essential characteristics 109–11, 113
mark as product of itself 93–4
product marks 93–4
regime overlaps 66–7, 116–17
substantial value 109–12
Tripp Trapp chair 92–4, 104–6, 109–12
unfair competition rules 101, 112–13, 117–18
unregistered design right 113, 118–19
industrialization
cultural and traditional knowledge, and 141–5, 153–4

Infopaq International v. Danske Dagblades Forening 96–7, 108
innovation
affordability, and 36–7
competition, and 76–8
convenience, and 28–31
cultural influences 34, 36
field of technology dominance 160
incentives 159–61, 177–8, 182, 186
incremental patents 159–60
licensing fees, and 159–60
minimalism, and 29
multi-functionality 28–9
need seeker model 31
patent impacts on 8–12, 19, 182
research, validity of 15–17
TRIPS Agreement impacts 11–12, 19
user influences on 32–3, 36, 40
intellectual property rights, generally
advantages 41–2
balancing of social costs and benefits
117–18
characterization 44–5
cumulation principle 102–3
disadvantages 1–2, 44–5
droit d’auteur 48–9
duration of rights 50
economic aspects 47–9
functional view 46–7
heightened protection
incentives for 174–81
restrictions on 181–6
historical development 3, 114–15
interpretation overlaps 67–9
inventors, role of 46
investment agreement protections
173–4
mechanical view 44–5
natural status of ideas, and 50
perceptions of 1–2, 41, 44–5
protection
disadvantages 180–81
globalisation influences on
185–6
heightened, incentives for
174–81
incentives, generally 180–81, 186
other obligations, and 169–70
over-protection 183–6
trends 4–7, 160–61
public health protection obligations
169–70, 175
public interest, and 49
purpose 1–2, 46–52
regime overlaps 66–7, 95–7, 102–6,
112–17, 167
research
limitations and validity 15–17,
20–21
opportunities 17–20
trends 2
social contribution 50
strict necessity principle 52–3
copyright 62–8
patents 56–62
trade marks 53–6
targeted rights 55–6
international technology transfer
see technology diffusion
inventors, role of 46
investment
heightened IPR protections, and
177–8
influential factors 8–9
intellectual property protection, role
in 46, 177–8
patent disputes, and 177
investment agreements
intellectual property protection under
173–4
Israel 5–6
Ivus, O. 13
Jacobsen, Arne 88–9, 106, 114
Japan 5, 7, 85
Javorcik, B.S. 14
jianyue (minimalism) 29
Jordan 5, 7
Kiribati Islands 179
Koninklijke Philips Electronics 109
Kornspitz Company v. Pfahnl
Backmittel 135–6
Kyle, M.K. 11
laws of nature doctrine 160, 181
LEGO Juris v. OHIM 109
licensing
dependent patents, and 58–9
fees 159–60
public health obligations, and 170
refusal to license restrictions 72–6,
78–80, 160
willing licensee test 84–7
LinkedIn 25, 29
logos 166–7

McGahan, A.M. 11
market power 2
Marrakesh Treaty for the visually impairment 2013 165
Maskus, K.E. 13–14
mass produced goods, design protection
  Egg chair 88–90, 111, 114–15
  Tripp Trapp chair 92–4, 104–6, 109–12
MCI Communications Corp. v. AT&T 73
Merges, Robert 41–2
Mexico 5–6
Microsoft 30, 39
Microsoft v. European Commission 76–7
mobile phones industry
  China, in 26–7, 39
Motorola 84

Nagaoka, S. 14
National Knowledge Infrastructure (CNKI) 30
New Zealand 184
Norway
  design protection law 91–3
  copyright law overlap 104–5
  Tripp Trapp chair 91–4, 104–6, 109–12
Opsvik, Peter 91–2
Orange Book 84

Painer v. Standard Verlags 107–8
Park, W.G. 4–7
patents
  enforcement 168
  essential facilities doctrine
    Chinese interpretation 71–2, 76–8
    EU interpretation 74–8
    F/RAND commitments, and 79–87
    no injunction rule 86–7
    principle 72–3
  US interpretation 73–4, 76–7
  willing licensee test 84–7
  field of technology dominance 160
generally
  gene patents 60–62, 181
  GP Index 4–7
  innovation impacts 8–12, 19
  investments, role as 177–8
  protection trends 3–7
  purpose 46–7
  technology diffusion, and 12–15
  incremental patents 159–60
  laws of nature doctrine 160, 181
  patentable subject matter 160, 169, 181–2
pharmaceutical industry
  incentives for 182–3
  second and third use patents 168, 182–3
  technology diffusion, and 13–15
  term extensions 168, 182
  policy developments 168–9
  purpose 181–2
  second and third use patents 168, 182–3
strict necessity principle
  ECJ patents approach 56–7, 60–62
  experimentation exception 57–8
  interpretation restrictions 57–8
  licenses and dependent patents 58–9
  public benefit exceptions 58–60
  technical contribution of art 61–2
  term of protection 168
  two-step process 182
pharmaceutical industry
  patent incentives 182–3
  patent term extensions 168, 182
  patents and technology diffusion 13–15
  second and third use patents 168, 182–3
Philip Morris v. Uruguay 173–4
pinwei (style) 29–30
piracy, in China 35–7
place
  see geographical indications
policy experiments 18–20
Portugal 5, 7
Index

preferential trade agreements (PTAs) 3
protected designations of origin (PDO) 155
See also geographical indications
protected geographical indications (PGI) 155
See also geographical indications
public benefit 58–60
public health, protection obligations 169–70, 175
public interest 49, 170
Puttitanun, T. 10
Qian, Y. 10, 19–20
Qihoo 360 30
Radio Telefis Eireann v. Commission (Magill case) 74–6
Rakuten 30
R&D
patents role in 2, 7–8
innovation, and 11–12, 19, 182
uncertainty, and 182
refusal to deal 71–3, 160
China, in 72–6, 78–9
research
data linkages 17
limitations and validity 15–17, 20–21
national surveys 17–18
opportunities 17–20
panel surveys 20
policy experiments 18–20
rights management information (RMI) 165
Samsung 84
Samsung v. Apple 85–6
Schneider, P.H. 9–10
Sexwax Incorp. v. Zoggs International 184
shanzhai (counterfeit products) 35–6
Singapore 5–6
smells, trade mark protection 166
South Africa 5
South Korea 5–6, 85–6
standard-essential patents (SEPs)
Asian interpretations 85–6
Chinese restrictions 78–80
definition 78
F/RAND commitments, and 79–87
hold-up/lock-in abuse 79–84
injunctions against 82–4
refusal to license restrictions 79–80
safe harbours 79
standardization conflicts 80
willing licensee test 84–7
Steiner, Gertrude 107–8, 115–16
strict necessity principle
copyright 62–8
balance of interests 63–4
direct violation, justification for 65–6
exceptions and exclusions 63–6
freedom of expression 50, 65–6
images, treatment of 64
margin of appreciation 65–6
temporary acts of reproduction 65
work, definition of 66–8
patents
ECJ patents approach 56–7, 60–62
experimentation exception 57–8
interpretation restrictions 57–8
licenses and dependent patents 58–9
public benefit exceptions 58–60
technical contribution of art 61–2
trade marks 53–6
availability requirement 54
in course of trade restriction 54–5
limitations 54
purpose 55–6
speciality principle 54–5
targeted rights 55–6
Sunder, Madhavi 42
surveys, benefits of 17–18, 20
Sweden 90, 106
Taiwan 5–6
Taobao 24–30, 32–3, 35, 38–40
technological protection measures (TPMs)
copyright protection, and 165
technology diffusion
need for 175

Gustavo Ghidini, Hanns Ullrich and Peter Drahos - 9781786438997
Downloaded from Elgar Online at 01/29/2019 05:03:06AM
via free access
Kritika: Essays on intellectual property

patent impacts 12–15, 19
research, validity of 15–17
trends 15
TRIPS Agreement impacts 13–15, 19, 175
Tencent 25–6, 32, 35, 38–40
Tmall 24–5, 29–30
tobacco industry 177
Towson, Jeffrey 27
trade marks
3-D marks, protection 93–4
Community Trade Mark 100
copyright law overlaps 66–7, 116–17, 167, 184
exclusive rights
generic marks/signs 124–7
investment/advertising function 126–7
market interests, and 123, 127, 132
protection by continued activity 126–9, 136–7
purpose 119
value over time 120–22
generic marks/signs/GIs
Björnekulla v. Procordia Food 134
challenges 129–30
commercial operator perception 133–4, 137
consumer perception 133–5, 137
document, reasons for 130–31
ECJ interpretation 132–6
establishment as 124–6
Kornspitz Company v. Pfahnl Backmittel 135–6
new product without common name, and 130–31
personal name of producer, and 130–32
protection by continued activity 126–9, 136–7
industrial designs, and distinctiveness 99–100, 102, 111, 113
essential characteristics 109–11, 113
mark as product of itself 93–4
product marks 93–4
substantial value 109–12
Tripp Trapp chair 91–4, 104–6, 109–12
industrial designs overlaps 66–7, 116–17
investment agreement dispute settlement 173–4
logos 166–7
principles 99–100
protection
limitations 99
over-protection 183–4
policy development 166–7
regime overlaps 183–4
well-known marks 184
purpose 55–6, 126–8
shapes
policy development 166
smells 166
strict necessity principle 53–6
availability requirement 54
in course of trade restriction 54–5
limitations 54
purpose 55–6
speciality principle 54–5
targeted rights 55–6
well-known marks 184
work, definition of 66–8, 117
trade secrets, protection 166, 168
traditional knowledge
community sustainability, and 155
EU policy development 150–52, 155–6
fashion industry, and 141–5, 147–9
152–4, 156–8
importance 150
IPR protection role, generally 179
nationalism and competition 152–4
place, role of 154–6
Trans-Pacific Partnership (TPP) 3, 162, 164–6, 168–72
Tripp Trapp chair 91–4, 104–6, 109–12
TRIPS Agreement 1994 3, 19
adoption, reasons for 174–5
Index

compliance obligations 163
copyright policy development 163–6
criminal enforcement provisions 166
developing countries, impacts on 174–6
dispute settlement 171–3
enforcement role 171–4
influences of 162–3
innovation impacts 11–12
licenses and dependent patents 58–9
national emergency provisions 169–70
patent policy development 168
public health protection obligations, and 169–70, 175
purpose 169
technology diffusion impacts 13–15, 19, 175
three step test 165, 169
trade mark policy development 166–7
TRIPS-Plus provisions 3–4, 7, 163, 171
Twitter 25

unfair competition
imitation products 101–2, 106, 112–13
IPR regime overlaps 112–13, 117–18
rules 101, 112–13
United Kingdom
geographical indications 141–5
industrial designs protection 117
industrialization and cultural knowledge 141–5, 153–4
United States
dispute settlement 172–3
patents
essential facilities doctrine 73–4, 76
F/RAND commitments 81–4
innovation impacts 11
law reform lobbying 160
trends 5–7
trade agreement policy development 176
unregistered design right 113, 118–19
Uruguay 173–4
US v. Terminal Railroad Association 73
utility, definition 36–7
Vanzetti, Adriano 130
Verizon Communications v. Trinko 73–4, 76
von Hippel, Eric 36
WeChat 25–32, 35, 38–40
well-known marks, protection 184
Westwood, Vivienne 144
WhatsApp 27, 38
work, definition
applied art 104–8
industrial designs, and 66–8, 95–7, 117
World Copyright Treaty 1996 (WIPO)(WCT) 165
World Economic Forum 4
World Intellectual Property Organisation (WIPO)
Copyright Treaty 1996 165
dispute settlement 171–3
World Trade Organization (WTO)
see also TRIPS Agreement 1994
Doha Declaration on Public Health 2001 169–70, 175
membership, reasons for 174–6
Xiaomi 26–7, 29–32, 38, 40
Yang, L. 13–14
Yu, Peter 38, 42–3