Index

Abbott, R. 122, 123, 133
Abramowicz, M. 17
abuse of right doctrine see database rights and EU Database Directive, abuse of right doctrine, Italy
Adler, A. 7
Adler, J. 12
advertising 9, 73, 84–5, 88–90, 91, 93, 94
Aghion, P. 11
Agitha, T. 139
Akinsolu, F. 12
Alexander, C. 93
Alexander, G. 157, 158
Alpa, G. 194–5
Altmann, L. 82
Aoki, K. 166, 167
Arnold, C. 78
Ascarelli, T. 131
Austin, G. 28
Australia, D’Arcy v. Myriad 13
automatic grant, Brazil 130–32
Ayres, I. 22
B2B and B2C regulations, unfair competition law 77, 79–82, 83–6, 87–8, 91
bad-debt principle, database rights 199
BakardjievaaEngelbrekt, A. 78
Barbosa, B. 121–45
Barbosa, D. 122, 142
Barbosa, P. 137
Baron, J. 158
Barron, A. 101, 152, 153
Barroso, L. 129
Bell, A. 12
Benkler, Y. 4

Bernitz, U. 78
Besen, S. 37
Beutler, S. 187
Biron, L. 152
Bitton, M. 20
Boesche, K. 95
Born, G. 41
Borkmann, J. 92
Bowman, W. 26
Brauneis, R. 17
Brazil, public policies and patent protection 121–45
automatic grant 130–32
cases 140, 141, 143
civil assets as property 136–7
competition, absence of 128–30
constitutional system classification of property rights 135–9
consumer assets as property 135–6, 137
effective results theory 124–6, 134
examiner increase suggestion 135
extending decisions of foreign PTOs, issues with 133
Industrial Property Authority (INPI) 122, 125–8
labour doctrine 122–3, 125, 134
outsourcing scheme and conflict-of-interest situations 133–4, 139
patent backlog 125, 126, 127, 128–30, 132, 133, 134
patent extension term 128–30
Patent and Trademark Office (PTO), abandoned structure 125–30
production assets as property 137–9
production assets as property, legal relationships 138–9
public domain, bypassing 140–41

203
social function of property 136–8, 142–3
social good 122, 123–5, 134
subsidies 135
taxation 136, 137
trademark ‘dumping’ rates 127–8
twin sister’ pipeline patents 131–2
Brazil, public policies and patent protection, overlap trend and erosion of thresholds 139–44
burden of proof in the administrative procedure 143
double-decker protection model 142, 143
finality/function argument 141–2
Person Having Ordinary Skill in The Art (PHOSITA), judicial attempts to change 143–4
Breakey, H. 149
Breznitz, S. 32
Brownsword, R. 53, 70
Buccafuso, C. 112
bundle-of-rights concept 146–79
buy-out contracts 174
distributive approach 157–8, 171–4
economic approach 161–2
history 158–63
legal realism 165–6, 171
limitations of property 167–8, 169–70
moral rights 165, 174
non-owner entitlements 169–70, 172
opposition to 162–3, 174–7
pluralistic view of property regimes and institutional choices 164–5
property theory 146–9
and public domain 151–2, 172, 175–6
relational dimension 158, 160–61, 168–70
remuneration right 168, 173–4
social construction, property as 159, 165–7, 168–9, 170
bundle-of-rights concept, copyright as property 150–56
challenges to 151–2
civil law versus common law 154–5, 157
communicational view 152–3
legal category of property 150–51, 152–3, 154–5
licensing and exploitation 175–6
natural right, rejection of property as 164, 165, 166
and public sphere 153–4
traditional approaches 151–4
Burney, B. 10
Burns, J. 16
Burstein, M. 22
buy-out contracts, bundle-of-rights concept 174
Buydens, M. 151

Cabell, D. 37
Calo, R. 194
Canada
CETA (Comprehensive Economic and Trade Agreement) 44
Harvard College v. Canada (Commissioner of Patents) 39
Cavanagh, A. 102
cease-and-desist orders 88–90
see also advertising
Cerqueira, J. 131, 142
CETA (Comprehensive Economic and Trade Agreement) 44
Chan, L. 36
change agent, law as 115–18
Chapdelaine, P. 147, 149
Chappatte, P. 37
Chazal, J.-P. 157, 159, 165
Chen, K. 36
Christie, A. 43
Claeys, E. 161
Coase, R. 155–6
Codiglione, G. 182, 187
Cohen, F. 159
Cohen, J. 146, 148, 155, 164, 171, 172, 177, 178
Cohen, Mike 33
Cohen, Morris 159
Index

collective conscience 101–2, 103–4, 107–12, 115–16
see also property relationships
commodification of property 102, 106–7, 110, 115, 116–17
Commons, J. 158–9
communal resource, property as 117–20
competition law 26–7, 42, 193–5, 198–9
absence of, Brazil 128–30
unfair see unfair competition law
conflict-of-interest, outsourcing scheme, Brazil 133–4
Conley, J. 15
consumer rights
assets as property, Brazil 135–6, 137
digital economy and private/contract law 56–8, 64, 66–7, 70
unfair competition law 76, 82–6, 92–3
continuity vs. rupture paradigm, digital economy and private/contract law 53–4, 62–73
contract law
buy-out contracts 174
and digital economy see digital economy and private/contract law
and property relationships 110
and unfair competition law 93–4
Contreras, J. 35, 36, 37
Cook-Deegan, R. 15
Coombe, R. 152, 153
copyright
and bundle-of-rights concept see bundle-of-rights concept
Copyright Directive, EU 50, 61, 170
databases see database rights and EU Database Directive, copyrightable databases
digital economy and private/contract law 51–2
fair access for users and social good 112–15
see also patents; trade mark protection
Corgill, D. 82–3, 91
Coriat, B. 106
Correa, C. 132
Costa, S. 36
Cotterrell, R. 108, 109, 115, 117, 118
Cottier, T. 88
creator rights, property relationships 110, 113–14
Crémer, J. 182
Czarnitzki, D. 23
Dagan, H. 148, 149, 158, 162–3, 164, 165, 166, 171, 176
database rights and EU Database Directive 18–20, 23, 180–201
antitrust violations and competition checks 193–5
database owner rights 188
database and software protection 187–8
digital datasets and automated data collections 183–4
economic exploitation of creative collection 188
uses and abuses 192–8
see also digital economy and private/contract law
database rights and EU Database Directive, copyrightable databases autonomously protectable works 186–7
choice, processing and management of the collected information 186
originality and creativity
requirements 185–6
database rights and EU Database
Directive, sui generis right
188–92
data verification 190–91
de minimis thresholds 190
dedicated meta search engine
infringements 191–2
and dominant position abuse 193–5
maker’s exclusion rights 191, 192
Web Scraping 191
Davison, M. 183
De Beer, J. 149
De Carvalho, N. 124
De Mauro, A. 181
De Streeck, A. 201
dedicated meta search engine
infringements, database rights
191–2
Denicola, R. 26
Derclaye, E. 140, 183
developing countries, IP protection
12–13, 23–4, 25
Devine, K. 9
Di Robilant, A. 147, 157, 161, 164,
169, 170
digital economy and private/contract
law 47–74
consumption economy and
consumer rights 56–8
continuity vs. rupture paradigm for
private law 53–4, 62–73
copyrights 51–2
data sovereignty 70–71
digital code suggestion 67
digital content, defining 62–4
digital society 58–61
economic regulation 50–51, 52, 55,
67, 68
EU and Digital Single Market
69–70
exceptionalists 67, 71–2
fairness and transparency regulation
71
geo-blocking regulation 71
holistic perspective on private law
52, 68, 71–3
intellectual property rights 50
non-exceptionalists 64–5, 70, 73
‘onlife’ world and product
consumption 66–7, 70
outsourcing 49–50, 52
path dependency 51–3, 60–61, 68
production society 54–5
regulation and smart technologies
66–7
social regulation 51–3, 55, 65, 67,
71–2
see also database rights and EU
Database Directive
Digital Single Market, EU 69–70
Dinwoodie, G. 25, 35, 38, 39, 40
distributive approach, bundle-of-rights
concept 157–8, 171–4
dominant position abuse, and database
rights 193–5
Donoso, E. 23
Doud, R. 22
Drabiak, K. 18, 37
Drahos, P. 14, 23, 151, 172
Drassinower, A. 152
Drexl, J. 92–3, 182
Dreyfuss, R. 1–46
Drezner, D. 34
dual use inventions 8, 27, 142, 143
Dunner, D. 30
Duportail, J. 16
Durkheim, E. 101–2, 108, 109–11,
114–15, 116, 120
Dusollier, S. 146–79
Easterbrook, F. 2, 147
economic issues
bundle-of-rights concept 161–2
database rights and EU Database
Directive 188, 198–9
digital economy and private/contract
law 50–51, 52, 55, 67, 68
financial incentives, and innovation
effects 4, 17–18, 21–3
effective results theory, Brazil, public
policies and patent protection
124–6, 134
Eisenberg, R. 33
Index

Cussens v. Brosman 197
Diamantis v. Dimosio and OAE. 197
Donaldson Fitration Deutschland v. Ultra Ai 197
Dufour 183–4
Emsland-Stärke v. Hauptzollamt Hamburg Jonas 197
Fixtures Marketing Ltd v. OPAP 183, 190
Football Dataco v. Yahoo! 184, 186
Freistaat Bayern v. Verlag Esterbauer 184
Gesellschaft für Antriebstechnik v. Lamellen und Kupplungsbau Beteiligungs 44
Google France v. Louis Vuitton Malletier 35
Gut Springenheide 95
Halifax v. Commissioners of Customs & Excises 194, 197
IMS Health 194
Infopaq International v. Danske Dagblades Forening 186
Innoweb v. Wegener 184, 187–8, 191
Intel v. European Commission 198
Kamer van Koophandel v. Inspire Art 195
Kofoed v. Skatteministeriet 197
Kratzer v. R+V Allgemeine Versicherung 196, 197
Lair v. Universität Hannover 196–7
L’Oréal v. eBay 35
Magill 194
Microsoft 194
Monsanto Tech. v. Cefetra 14
Painer v. Standard Verlags 44, 186
Radio Telefis Eireann & Independent Television Publications v. Comm’n 27
Roche Nederland v. Primus & Goldberg 44
Ryanair v. PR Aviation 187, 193
SICES 194
Spezzino’ v. San Lorenzo Soc. Coop. 196

Elhauge, E. 27
Elkin-Koren, N. 152
Elteste, U. 193
Enchelmaier, S. 83
enforcement issues, unfair competition law 90, 91–7
Etzkowitz, H. 32
EU
CETA (Comprehensive Economic and Trade Agreement) 44
Communication on Standard Essential Patents 38
consumer law 58, 64
Copyright Directive 50, 61, 170
Database Directive see database rights and EU Database Directive
Digital Single Market 69–70
Distance Selling Directive 58, 59
E-Commerce Directive 58–9
gene patent infringement 14
General Data Protection Regulation (GDPR) 50, 61, 72, 73
Hague Conference on Private International Law 45
Infosoc Directive 59
Software Directive 187, 188
trade mark protection 35–6, 37, 92
Trade Secrecy Directive 21–2
unfair competition directives 83–5, 91–2, 93
Unified Patent Court Agreement (UPCA) 30, 31, 40–41
EU, cases
Altun 197
AstraZeneca 197–8
Bezpecnostni softwarova asociace 186
Bremnet v. Paletta 197
British Horseracing Board v. William Hill 19, 190
Cadbury Schweppes v. Commissioner of Inland Revenue 197
Centros v. Erhverves-og Selskabsstyrelsen 197
Commission v. Belgium 197

Peter Drahos, Gustavo Ghidini and Hanns Ullrich - 9781839101342
Downloaded from Elgar Online at 11/27/2021 12:23:51PM
via free access
Svenska Journalisförbundet v. Council 196
Tiercé Ladbroke 194
Torresi v. Consiglio degli Avvocati di Macerata 195
TV10 v. Commissariat voor de Media 196–7
Evans, J. 20
Even, Y. 161, 162
Evers, L. 23
exceptionalists, digital economy and private/contract law 67, 71–2
exclusive rights 3–4, 24–5
database rights and EU Database Directive 191, 192
Ezrachi, A. 181–2, 194
Fabiani, M. 186
Facebook 8–9, 11
fairness 35, 37, 71, 112–15, 199–200
unfair competition law see unfair competition law, fairness definition issues
Falce, V. 180–201
Findlay, M. 100–120
Finger, M. 95
Fisher, W. 151
follow-on innovation and invalidation of IP rights 13–15, 19–20, 24
Ford, R. 67
Forgioni, P. 142
France 57, 58, 78, 82
Frankel, S. 2, 14, 23, 43
Franklin, S. 42
freemium model 9, 27
Friedsichs, S. 117–18
Frischmann, B. 36
future research agenda 20–28
Gathii, J. 43–4
Geist, M. 43
Geller, P. 152
geo-blocking regulation 71
see also digital economy and private/contract law
Germany 54–7, 60–61, 63, 64, 70–71, 88–90, 92, 94–7
Gervais, D. 20
Ghidini, G. 3, 26, 192, 202
Ginsburg, J. 7, 20, 40, 150, 172
Girard, F. 156
Girod, J. 18, 37
global disputes, resolving 40–44
Glöckner, J. 78, 83, 95
Glucolf, J. 26
good faith see fairness
Goodman, E. 17
Google 9, 11, 16, 27, 35, 67
Gopalakrishnan, N. 139
Gordon, W. 6, 151, 156
Gormley, L. 83
Gosselies, A. 151–2
Grabowski, H. 24
Graef, I. 181
Graetz, M. 22
Granstrand, O. 139
Granville, K. 26
Grau-Kuntz, K. 122
Grey, T. 150, 162, 178
Grosse Ruse-Khan, H. 169
Grunes, A. 183
Guadamuz, A. 37
Gupta, I. 193
Habermas, J. 153
harmonization issues 38–9, 59, 69, 94, 95, 96–7
Harte-Bavendamm, H. 85
Hartwig, H. 88
Hattenbach, B. 26
Heide-Jorgensen, C. 78, 89
Helfer, L. 28, 39
Heller, M. 132, 138, 162
Helman, L. 7
Hemel, D. 17
Hemphill, C. 37
Henning-Bodewig, F. 75–99
Hildebrandt, M. 66
Hilty, R. 75, 83–4, 91
Ho, C. 43–4
<table>
<thead>
<tr>
<th>Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hoeren, T. 182</td>
</tr>
<tr>
<td>Hohfeld, W. 159–60, 168–9, 170</td>
</tr>
<tr>
<td>Hollis, A. 22</td>
</tr>
<tr>
<td>Honoré, A. 159, 161</td>
</tr>
<tr>
<td>Howell, S. 23</td>
</tr>
<tr>
<td>Howse, R. 43</td>
</tr>
<tr>
<td>Hrdy, C. 6</td>
</tr>
<tr>
<td>Hugenholtz, B. 168, 182, 187, 193</td>
</tr>
<tr>
<td>Hughes, J. 11</td>
</tr>
<tr>
<td>human rights law 27–8</td>
</tr>
<tr>
<td>ICSID, <em>Philip Morris Brands v. Uruguay</em> 43</td>
</tr>
<tr>
<td>income inequality, and innovation exclusion 11–12, 36</td>
</tr>
<tr>
<td>India, <em>Novartis v. Union of India</em> 13–14</td>
</tr>
<tr>
<td>individual rights, property relationships 101, 104–5, 119</td>
</tr>
<tr>
<td>information</td>
</tr>
<tr>
<td>knowledge commonses 36</td>
</tr>
<tr>
<td>knowledge products, and social injustice 11–13</td>
</tr>
<tr>
<td>online sharing effects 102–4, 106–8, 109–12, 116</td>
</tr>
<tr>
<td>see also knowledge</td>
</tr>
<tr>
<td>Information Age 2, 3–4, 10, 11, 29, 34, 116</td>
</tr>
<tr>
<td>Infosoc Directive, EU 59</td>
</tr>
<tr>
<td>innovation 4–5, 8–9, 11–12, 13–15, 19–20, 24</td>
</tr>
<tr>
<td>institutions 29–45</td>
</tr>
<tr>
<td>emerging 34–45</td>
</tr>
<tr>
<td>fair, reasonable, and nondiscriminatory (FRAND)</td>
</tr>
<tr>
<td>licensing 35, 37</td>
</tr>
<tr>
<td>global disputes, resolving, and arbitration 40–44</td>
</tr>
<tr>
<td>Internet Corporation for Assigned Names and Numbers (ICANN) 42–3</td>
</tr>
<tr>
<td>knowledge commonses 36</td>
</tr>
<tr>
<td>national courts and cross-border and multinational disputes 44–5</td>
</tr>
<tr>
<td>private ordering regimes 34–8</td>
</tr>
<tr>
<td>specialized courts 29–31, 41, 42</td>
</tr>
<tr>
<td>standard setting organizations (SSOs) 35–6, 37–8</td>
</tr>
<tr>
<td>supranational procedural institutions 38–45</td>
</tr>
<tr>
<td>Trans-Pacific Partnership (TPP) 38–9</td>
</tr>
<tr>
<td>Unified Patent Court Agreement (UPCA) 30, 31, 40–41</td>
</tr>
<tr>
<td>universities 31–4</td>
</tr>
<tr>
<td>universities, technology transfer offices (TTOs) 32–4</td>
</tr>
<tr>
<td>internet use 27</td>
</tr>
<tr>
<td>Internet Corporation for Assigned Names and Numbers (ICANN) 42–3</td>
</tr>
<tr>
<td>unfair competition law 90–91</td>
</tr>
<tr>
<td>inventiveness 13–14, 31, 123, 124–5, 133, 143</td>
</tr>
<tr>
<td>investor’s welfare doctrine, Brazil 123–4, 125, 134</td>
</tr>
<tr>
<td>Italy</td>
</tr>
<tr>
<td>abuse of right doctrine see database</td>
</tr>
<tr>
<td>rights and EU Database Directive, abuse of right doctrine, Italy</td>
</tr>
<tr>
<td><em>Fresenius Kabi Oncology v. Eli Lilly</em> 45</td>
</tr>
<tr>
<td><em>Pfizer</em> 200–201</td>
</tr>
<tr>
<td><em>Soc. Business Competence C. Soc. Facebook e altro</em> 188</td>
</tr>
<tr>
<td>Jaszi, P. 7</td>
</tr>
<tr>
<td>Jauch, A. 95</td>
</tr>
<tr>
<td>Jensen, P. 34</td>
</tr>
<tr>
<td>Jones, B. 6</td>
</tr>
<tr>
<td>Kamina, P. 147, 154</td>
</tr>
<tr>
<td>Kant, I. 152–3</td>
</tr>
<tr>
<td>Kapczynski, A. 13, 27–8, 106</td>
</tr>
<tr>
<td>Kaplow, L. 26</td>
</tr>
<tr>
<td>Karshtedt, D. 27</td>
</tr>
<tr>
<td>Katyal, S. 17</td>
</tr>
<tr>
<td>Katz, L. 174–5, 176</td>
</tr>
<tr>
<td>Keirsbilck, B. 78, 93</td>
</tr>
<tr>
<td>Ker, C. 173</td>
</tr>
<tr>
<td>Kerber, W. 181, 182</td>
</tr>
<tr>
<td>King, J. 183</td>
</tr>
</tbody>
</table>

Peter Drahos, Gustavo Ghidini and Hanns Ullrich - 9781839101342
Downloaded from Elgar Online at 11/27/2021 12:23:51PM
via free access
labour, property as causal product of
labour doctrine, Brazil 122–3, 125, 134

law as change agent, property
relationships 115–18

legal category of property, and
copyright 150–51, 152–3, 154–5

legal realism, bundle-of-rights
concept 165–6, 171

legal suspensions, resistance to
102, 103

market suspensions, resistance to
102, 103

Mackaay, E. 147, 156
MacPherson, C. 151
Madison, M. 162
Mansell, R. 102
Marabelli, M. 183

Merrill, T. 148, 161, 162, 163, 174
Michael, A. 149
Micklitz, H.-W. 47–74
Moffat, V. 11
moral rights 6–7, 165, 174
Moscon, V. 83–4
Moser, P. 22
Mossoff, A. 147
Moyse, P.-E. 154
Mulligan, C. 26, 38
multinational agreements and disputes
12–13, 38–40, 44–5, 110
Murray, A. 65
Murray, F. 22

Nash, J. 162, 167, 171
natural right, rejection of property as
164, 165, 166
see also bundle-of-rights concept
neo-liberalism critique, property
relationships 101–3
Netanel, N. 147, 152
network effects 8–9, 27, 118–19
Newell, S. 183
Newman, N. 183
Index

Nicolas, T. 22
Niebel, R. 95
non-exceptionalists, digital economy and private/contract law 64–5, 70, 73
non-owner entitlements, bundle-of-rights concept 169–70, 172
Nordhaus, W. 23 H. 146
Ohly, A. 95
Oliar, D. 14
O’Mahony, S. 36
‘onlife’ world and product consumption 66–7, 70
see also digital economy and private/contract law
originality requirements, database rights and EU Database Directive 185–6
Orsi, F. 156
Ostrom, E. 161, 172
Ouellette, L. 17, 22
outsourcing
Brazil, public policies and patent protection 133–4, 139
digital economy and private/contract law 49–50, 52
overlapping regulations, unfair competition law 76–7, 83–4, 91–4
Paris Convention, business-to-business (B2B) regulation, and unfair competition law 77, 79–82, 87–8, 91
Pashukanis, E. 100, 104, 120
Pasquale, F. 53
patents 14, 17–18, 22–3, 25, 149
protection, Brazil see Brazil, public policies and patent protection
Unified Patent Court Agreement (UPCA), EU 30, 31, 40–41
see also bundle of rights; copyright; trade mark protection
path dependency, digital economy and private/contract law 51–3, 60–61, 68
Patterson, L. 172
Patterson, M. 181
Penner, J. 162, 174
Perry-Kessaris, A. 117, 118, 119
Person Having Ordinary Skill in The Art (PHOSITA), judicial attempts to change, Brazil 143–4
Perzanowski, A. 9–10, 25
Petit, N. 194
Peukert, A. 83
Pimentel, L. 125
Pirruzzella, G. 181
Podszun, R. 94
Pogge, T. 22
Polanyi, K. 106, 107, 118
Pollack, M. 82
Porat, A. 49
Porter, E. 9
portfolios of rights, acquisition of 10–11
Posner, R. 156
possession and property, distinction between 105–8
Price, N. 23
private funding issues 17–18, 22
private ordering regimes 34–8, 42
private/economic law, and digital economy see digital economy and private/contract law
production assets as property, Brazil 137–9
production society, digital economy and private/contract law 54–5
property relationships 100–120
collective conscience 101–2, 103–4, 107–12, 115–16
commodification of property 102, 106–7, 110, 115, 116–17
and contract law 110
copyright, fair access for users and social good 112–15
creator rights 110, 113–14
inclusive social consensus 101–2, 103–4
individual rights 101, 104–5, 119
law as change agent 115–18
market suspensions, resistance to 102, 103
neo-liberalism critique 101–3
online information sharing effects 102–4, 106–8, 109–12, 116
origins theories 104–5
possession and property, distinction between 105–8
property as causal product of labour 104–5
property as communal resource 117–20
property as selective wealth 104, 106
property as theft 105
social solidarity 101–2, 103–5, 106
unauthorised information access as crime 111–12
property theory, bundle-of-rights concept 146–9
Proudhon, P. 104–5, 106, 107, 120
public domain 6, 8, 17, 20, 25, 151–2, 172, 175–6
bypassing, Brazil 140–41
public institutions see under institutions
public interest protection 24, 25, 37–8, 43–4, 56, 90, 158, 167
public policies and patent protection, Brazil see Brazil, public policies and patent protection
public sphere paradigm, and bundle-of-rights concept 153–4

Quintais, J. 168
Radin, M. 26
Radomsky, L. 18
Ragavan, S. 37
Rai, A. 33
Ram, N. 16
Raustiala, K. 20–21
Reichman, J. 20, 24, 36, 39, 192
relational dimension, bundle-of-rights concept 158, 160–61, 168–70
remuneration right, bundle-of-rights concept 168, 173–4
reputation incentives 5, 14
Richards, N. 183
Ricketson, S. 26, 40
Rigamonti, C. 6
Rose, C. 172
Rose, M. 153
Ross, A. 193
royalties allocation 27, 110, 130, 172–3
Samuelson, P. 18, 20, 192
Sarkar, S. 6
Sassen, S. 41
Scherer, F. 2
Schlag, P. 149, 156, 160, 170, 177
Schlager, E. 161
Schmieder, S. 95
Schricker, G. 77, 185
Schulson, M. 26
Schultz, J. 9–10, 25
Schwenger, D. 113–14
Scott Morton, F. 10
secondary liability against intermediaries 7, 28, 34–5
Semet, A. 31
Shadlen, K. 144
Shapiro, C. 9, 10, 27
Shavell, S. 17
Sichelman, T. 24, 32
Silberman, L. 21
Singer, J. 113–14, 166
smart technology 66–7
see also digital economy and private/contract law
Smith, H. 146, 156, 161, 162, 163, 174, 175
Sobel, D. 17
social construction, property as 159, 165–7, 168–9, 170
social contributions made by innovations 8–9, 18, 21, 32
social function of property, Brazil 136–8, 142–3
social good 112–15, 117–18, 119–20, 122, 123–5, 134

Peter Drahos, Gustavo Ghidini and Hanns Ullrich - 9781839101342
Downloaded from Elgar Online at 11/27/2021 12:23:51PM
via free access
Index

social injustice, and knowledge products 11–13
social responsibility, corporate social responsibility and unfair competition law 88
social solidarity, collective conscience 101–2, 103–4, 107–12, 115–16
software protection 187–8
see also database rights and EU Database Directive
Sørensen, K. 194
Spada, P. 185
specialized courts 29–31, 41, 42
Spengler, A. 98
Spindler, G. 66–7
sponsorship and subsidization schemes 17–18, 22–3
Sprigman, C. 14, 20–21
Stake, J. 100
standard setting organizations (SSOs) 35–6, 37–8
Stern, S. 162, 167, 171
Strahilevitz, L. 49
Strandburg, K. 5
Streinz, T. 39
Strowel, A. 147, 150, 154, 166, 168
Stucke, M. 181–2, 183, 194
Stuyck, J. 81
subsidies 17, 22–3, 25, 135
sui generis and databases see database rights and EU Database Directive, sui generis right
legislation suggestion and exclusive rights 18–20, 23–4, 35
Sukkar, E. 12
supranational procedural institutions 38–45
supranational standards, lack of, and unfair competition law 87–8
Surblyte, G. 194
taxation 17, 18, 22, 23, 32, 136, 137, 200
technology transfer offices (TTOs), universities 32–4
theft, property as 105
Tomkowicz, R. 141
Tong, R. 22
trade mark protection 35–6, 37, 43, 58, 91–2, 98, 124–5, 127–8, 140–41
see also bundle of rights; copyright; patents
trade secrecy protection 15–17, 21–2
Trans-Pacific Partnership (TPP) 38–9
TRIPS Agreement 7, 21, 24–5, 38–9, 81
Trott, D. 106
Tushnet, R. 4
'twin sister’ pipeline patents, Brazil 131–2
Tyler, T. 114
Uhlir, P. 36
UK 39, 40–41, 56, 90
Eli Lilly v. Actavis 44, 45
Illumina v. Premaitha Health 21
Lucasfilm v. Ainsworth 44
Unwired Planet International v Huawei Technologies 44
UNCITRAL, Eli Lilly v. Canada 43
unfair competition law 75–99
advertising 84–5, 91, 93, 94
advertising and cease-and-desist orders 88–90
consumer protection 76, 82–6, 92–3
and contract law 93–4
and corporate social responsibility 88
and enforcement issues 90, 91–4
enforcement issues, Germany 94–7
EU directives 83–5, 91–2, 93
harmonization issues 94, 95, 96–7
history 77–9
intellectual property relationship 91–2
internet use 90–91
overlapping regulations 76–7, 83–4, 91–4
Paris Convention roots and business-to-business (B2B) regulation 77, 79–82, 87–8, 91
protection purpose 83–6
terminology aversion 77–8
trademark protection 92
TRIPS Agreement 81
see also competition law
unfair competition law, fairness definition issues 86–91
and business ethics 88
and good taste and decency 88–9
subjectivity safeguards 87
supranational standards, lack of 87–8
Unified Patent Court Agreement (UPCA) 30, 31, 40–41
universities 31–4
US 18, 25, 27, 29–31, 32, 42, 56
Alice Corp. v. CLS Bank 13
AMP v. Myriad 8, 13
Ariosa Diagnostics v. Sequenom 21
Bilski v. Kappos 13
D’Arcy v Myriad Genetics 8, 13
Dastar Corp. v. Twentieth Century
Fox Film Corp. 14
Feist Publications v. Rural Telephone Service Co. 13
Impression Prod. v. Lexmark Int’l 10
Jacobellis v. Ohio 87
Kirtsaeng v. John Wiley & Sons 10
Laboratory Corp. of America Holdings v. Metabolite Laboratories 8
Lenz v. Universal Music Corp. 7
Mayo Collaborative Services v. Prometheus 13
Metro-Goldwyn-Mayer Studios v. Grokster 7
Mitsubishi Motors Corp v. Soler Chrysler-Plymouth 42
New State Ice Co. v. Liebmann 39
New York ex rel. Schneiderman v. Actavis 27
Nike v. Kasky 88
In re Nuijten 13
Phillips 140
Timberland 140
Voda v. Cordis Corp. 44
Van de Gronden, J. 83
Van Noorden, R. 5
Van Ypersele, T. 17
Varian, H. 9
Vaver, D. 144
Vertinsky, L. 33
Vivant, M. 148–9, 167
Von Hippel, E. 4–5
Wadlow, C. 78, 79
wealth, property as selective 104, 106
Weatherall, K. 24
Web Scraping, database rights and EU Database Directive 191
Webster, E. 34
Wermelinger, G. 88
Wood, D 31
Xifaras, M. 149–50, 157, 164, 177
Yackey, S. 25
Zech, H. 182
Zeno-Zencovich, V. 182
Zoppini, A. 188
Zuboff, S. 53, 68