Editorial

Intellectual property law is in itself a rich linguistic and conceptual landscape, as well as a tool for mapping creative topographies. This issue brings together the diverse reaches of intellectual property – through copyright, patents, trade marks and plant breeders' rights. How intellectual property interacts with new technology and social challenges is replete with conceptual difficulty and opportunity.

Phillip Johnson examines, in 'Mr Skemp's preposterous provision', the import of language in the United Kingdom's implementation of the European Patent Convention (1973). Drafting may not only facilitate harmonization but also mobilize difference. But is it all in the interpretation?

Christoph Graber looks to the cloud and the language of defence in copyright law. In 'Tethered technologies, cloud strategies and the future of the first sale/exhaustion defence in copyright law', Graber examines the 'tethering' of use to behaviour and ultimately the freedom of expression, as it were, in terms of consumer autonomy and privacy, and the courts' contradictory perspectives on the basic concepts and principles.

Chidi Oguamanam examines the legal dimensions of the discourse on the food system itself, in 'Africa's food security in a broken global food system', and asks whether the conceptual shift through plant breeders' rights signals an important linguistic, discursive and policy space to address the communication between food security and the food system. Oguamanam articulates clearly the relationship between legal developments and wider discursive communities.

Trade marks and their value are almost inextricably concerned with the production of secondary meaning, their protection and management involving at once both their entry into language and wider meaning, and their resistance to genericism. Matthew Kennedy notes the reliance on discursive hypotheses in his article, 'Enforcing the WTO rulings on trade marks and trade names in *Havana Club*', and considers whether the language of enforcement in the Dispute Settlement Understanding actually facilitates ambiguity rather than compliance.

Jessica Lai brings together very clearly the relationship between information, language and conceptual interpretations, and the importance for clarity, logic and enforcement, in 'Gene-related inventions in Europe: purpose- vs function-bound protection'. Lai notes the effort to resolve, through the principle of purpose-bound protection, the particular conceptual challenges for patent law that are presented by biotechnology-related invention, and asks whether the conceptual anchor in this discourse might otherwise be that of the all-important 'function'.

This issue's 'In Focus' section examines the subjective relationship between users and technology in understanding not only the scope of current technology (and copyright infringement) but also the future, and technology forecasting in patent industries. In 'A novel method of IP R&D using patent analysis and expert survey', Sunghae Jun, Seung-Joo Lee, Jea-Bok Ryu and Sangsung Park consider in detail the way in which technology forecasting might draw upon the subjective, qualitative approach of expert survey, and whether the language of the technology itself, through patent analysis, might be a better form of communication of technology futures.

Zhe Wang and Wei Li consider subjectivity and use in their article, 'Research on subjective elements for the indirect copyright infringement of IPTV manufacturers

in China'. Internet Protocol Television (IPTV) is delivered via the Internet or similar, allowing for enhanced services such as streaming, live television and on demand, and is of increasing media significance in China. The relationship between user and provider is somewhat immediate, potentially more interactive, and ultimately personal and communicative, and in this context the authors address the liability of the industry and, in particular, indirect infringement liability.

This issue includes case review articles by Emmanuel Kolawole Oke (*Bayer Corporation v Union of India*), on the importance of human rights discourse in the Delhi High Court to its interpretation of pharmaceutical patent protection, and by Ping-Hsun Chen (*Apeldyn Corp. v AU Optronics Corp.*), who looks at the communicative arena for infringement, and the liability attaching to inducement of infringement.

So, it is an issue of concepts. To paraphrase Gilles Deleuze, concepts are like bricks. Out of concepts we can build courthouses of reason or break windows. Let's build reason.

Professor Johanna Gibson
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