Editorial

In diverse and sometimes unexpected ways, this issue of the Queen Mary Journal of Intellectual Property explores the life of the system, the living system of intellectual property and all that dwells within it.

In ‘New Insights in Patent History: An Application of Evolutionary Theory’, Chris Dent considers the history and development of the patent system from the perspective of evolutionary theory. Through this approach, the author examines the actors within the patent system and their interaction with the immediate patent environment, as well as the interaction between the patent ecosystem and other ‘living’ systems. An evolutionary approach raises the question of freedoms and necessities within the patent system, and the extent to which the system shapes the very actors it serves.

In ‘A Pioneering Undertaking to be Optimized: Legal Transplantation and Practice of the Notice and Takedown Regime under China’s Patent Law’, Xianwei Zhang and Xiequn Zhu address a different interaction between the patent system and other ‘living’ systems, that of the interaction between patent rights, e-commerce, and ultimately the copyright system in China. In response to the pressure of infringement of patent rights in the e-commerce environment, Chinese legislators have transplanted into the patent system the ‘notice and takedown’ rule familiar in copyright, which, it is argued, is an unsuitable adaptation to the changes introduced by the online environment.

In ‘The Exhaustion of Patent Rights v the Implied Licence Approach: Untangling the Web of Patent Rights’, Jessica Lai addresses the relationship between the patent exclusive rights and the object or artefact embodying the patent. The author notes the two different ways of addressing the same questions, namely implied licence and exhaustion. The author identifies the complications and uncertain landscape introduced by this inconsistency and notes the impact of this uncertainty in international trade. Further, the author notes the illusory nature of several rights unless and until embodied in the artefact itself. Indeed, in terms of the patent system, they are themselves artefacts, as it were. The author makes recommendations for a simplified approach, arguably a ‘vital’ necessity from within the system itself.

Do the beings of intellectual property compete or cooperate for survival? Sayyed Mohammad Hadi Ghabooli Dorafshan argues for the necessity of competition in the market in ‘Interface between Competition Law and Intellectual Property Licences in Iran’. In this context, and raising new insights for biological models themselves, competition is not an anathema to cooperation, but is understood as a mechanism for ensuring cooperation, a mechanism for greater survival, not just a ‘survival of the fittest’.

Perhaps one of the most compelling and indeed almost literal examples of the living systems of intellectual property is that of geographical indications. In ‘Geographical Indications Act in India and Veracity: A Producer Perspective’, Anson CJ identifies the way in which geographical indications create a kind of community of people, doing so through the very real and very relevant principle of place. Through a consideration of the developments of geographical indications and their protection in India, the author gives a fascinating account of the vital relationship between the producer and product, a living account of the social being of intellectual property.

As Einstein said, 'The really valuable thing in the pageant of human life seems to me not the State but the creative, sentient individual, the personality'. The richness of the intellectual property system is propelled by real lives, by its personalities. We hope you enjoy meeting some of them in this issue.

Johanna Gibson
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