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IP Heads-Up™

Current Changes Impacting Your Intellectual Property


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New European Patent System Now Fully Operational!

The European **Unitary Patent** is now finally being issued, with many already secured for our clients. Unlike the past, the new patent covers 17 countries, soon to be expanding to 24.

The European Patent Office (EPO) is still involved, but the changes call for making new and interesting choices to maximize patent protection. We efficiently secure the protection clients need and want in Europe – and of course in the United States and elsewhere.

The new **Unified Patent Court** (**UPC**) system is also up and running, with more than 40 cases already filed. The **UPC** system has been quick to show its teeth for patent owners' benefit.

In fact, **UPC** rulings already demonstrate the system's capability to provide rapid patent relief. For example, in a case filed by e-bike maker myStromer AG, the Düsseldorf **UPC** court issued an *ex parte* (no-hearing) preliminary injunction stopping display of its competitor Revolt Zycling AG's accused e-bike at the Eurobike 2023 trade show, while also barring infringement of myStrommer's patent rights in Germany, France, Italy and Holland, based on evidence from those countries. This sort of relief had not been possible in the past!

Appeals Decision Stresses Importance of Litigation Settlements

A strong ruling by the U.S. Fourth Circuit Court of Appeals underscores the importance of abiding by terms of a settlement agreement. Two competitors *twice* fought over rights to the DEWBERRY trademark – and it's the *two cases* that make the appeals ruling so notable.

In a 2007 settlement of the first case, the infringing defendant agreed (1) to stop certain uses of the DEWBERRY mark and (2) to not challenge plaintiff's trademark registrations. But later, defendant *breached* the settlement by *more* infringement, triggering the second case, during which the defendant *further breached* by challenging plaintiff's registrations. Hence the Fourth Circuit's strong ruling.

The Fourth Circuit affirmed and strengthened monetary relief for the plaintiff, including disgorgement of $43 million in profits made by the infringer and affiliates. The Court said it was in the public interest to make "[defendant's] conduct unprofitable," and the settlement breaches made this an "exceptional case" ruling, justifying an award of attorneys' fees.

Non-Compete Agreements in State of Flux

Non-compete agreements, by which employers bar ex-employees from competing, are now in a state of flux, warranting attention from employers. Already subject to frequent state-level challenges where unreasonable and excessive restrictions are alleged, major changes now mulled in federal law threaten far stricter limitations on these agreements.

Rules proposed by the FTC, slanted sharply by a pro-employee perspective, have prompted tens of thousands of public comments raising many issues, including constitutionality. With this deluge of input, FTC decision-making has now been postponed until 2024.

As it stands, non-compete laws vary by location, with legal guidance depending on a grasp of relevant statutes, case law, and client situations. In Wisconsin, non-competes are usually enforceable only against key employees or those with access to confidential information. Illinois has a compensation threshold, specific notice requirements, certain exempt professions, and regulatory penalties. In Britain, non-competes are widely used, but soon may not bind ex-employees for longer than three months. Major countries of the European Union also allow non-competes, but some require ongoing payments to ex-employees. (Please note, this document does *not* convey legal advice and should not be taken as such.)

With such major changes, the time is ripe for employers to review and consider adjusting their non-compete strategies and agreements. We stand ready to help.

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