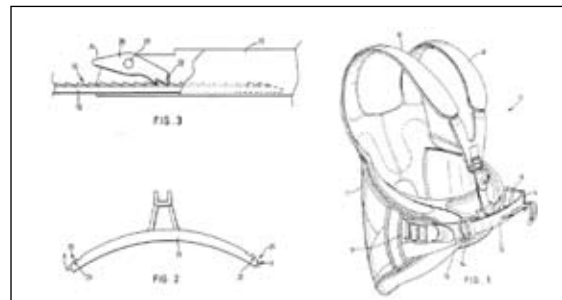


Lack of novelty undoes patent

A court in The Hague has ruled that Mystic's Clicker Bar, a waistband with a spreader hook for attaching to a surfing jacket, can provisionally remain on sale. Kubus, which holds a patent on a spreader hook system, had demanded that the Clicker Bars be destroyed for infringing its patent.



Left: MBrands' Mystic Clicker Bar. Right: The patent of Kubus: lack of clarity and not new.

Previous publication

To be eligible for patent protection, an invention must be new. Kubus claimed that its patent covered a 'new' spreader hook construction which reduced wear and tear. However, during the case,

MBrands, which makes the Clicker Bar, offered as evidence a German publication showing a similar system which predated Kubus' patent application.

Not new

The existence of this older

German publication, together with a lack of clarity regarding some aspects of the description of the Kubus patent, was enough to convince the court to provisionally assume that Kubus had not invented the hook and that

its patent protection was highly likely to be overturned in a subsequent appeal.

Costs awarded

As well as losing the case, Kubus was ordered to pay € 30,000 in costs. Some of

these had been incurred by MBrands for researching the validity of Kubus' patent. Kubus will have to meet these costs as well.

USD 891 million settlement

US telecoms rivals Qualcomm and Broadcom have finally settled their long-running dispute over alleged patent infringements.

One condition of the settlement is that Qualcomm must pay Broadcom an astronomical USD 891 million.

Line

The settlement draws a line under all ongoing disputes concerning patented technologies for the microprocessors used in mobile phones.

Triple patent infringement

The dispute arose in 2005, when Broadcom took Qualcomm to court. In May

2007 a US jury concluded that Qualcomm had infringed three of Broadcom's patents. Shortly afterwards, Qualcomm was ordered to pay USD 8.5 million in damages for withholding evidence.

Four-year payment term

The parties concluded a settlement in May this year

to avoid lengthy and costly legal battles. Qualcomm has been given four years to pay the USD 891 million, beginning with an instalment of USD 200 million in June 2009.



About Zacco

Zacco is a leading European intellectual property consultancy with offices in Denmark, Sweden, Norway and the Benelux (Shieldmark.Zacco).

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- Patent drafting and prosecution
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- Domain name registration
- Portfolio management
- Legal advice and litigation

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Brief News



Spain displeased with Ryanair

The Spanish royal family is not amused by an advertisement for the budget airline Ryanair. When Queen Sofia flew home on a Ryanair jet, the airline exploited the fact by including a photo of her majesty in a commercial accompanied by the slogan 'Fly like royalty'.



McCurry

Kuala Lumpur restaurateur P. Suppiah has been told he can continue using the name McCurry for his restaurant. A court finally issued a judgement at the end of April, bringing to a close a legal battle lasting eight years. The ruling concluded that McCurry did not infringe the trade mark rights of fast food chain McDonald's.

No emblems

In a decision issued on 16 July 2009, the ECJ dismissed US Clothing Associates' application to register its RW trade mark, which features a symbol very similar to Canada's maple leaf state emblem, as a Community trade mark. Registration of such emblems is legally outlawed.



Michael Jackson's shoe patent

Michael Jackson, the 'King of Pop', who died in June, amazed the world when he appeared to do the impossible while performing the number *Smooth Criminal*: leaning forward at a physically impossible angle. The secret lay in a special shoe which he both devised and patented himself.

Jackson the inventor

On 26 October 1993, Michael Jackson obtained the US patent to a special shoe that enabled him to lean forward at an apparently impossible angle. The patent was issued under number 5,255,452 and cited Jackson as one of the inventors.

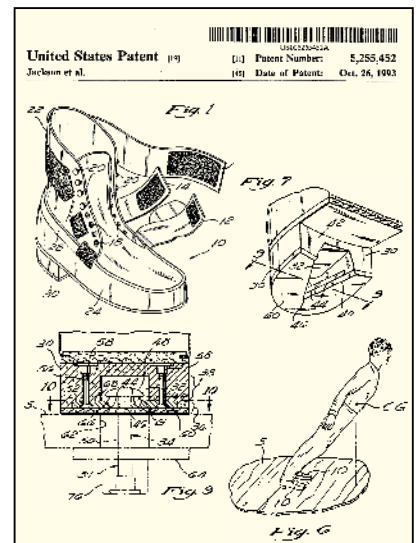
Heel-based system

The technology patented by Jackson consists of a shoe containing a special system in the heel, which can be attached to a pin concealed in the stage. This holds the shoe firmly in place and allows the dancer to lean in different

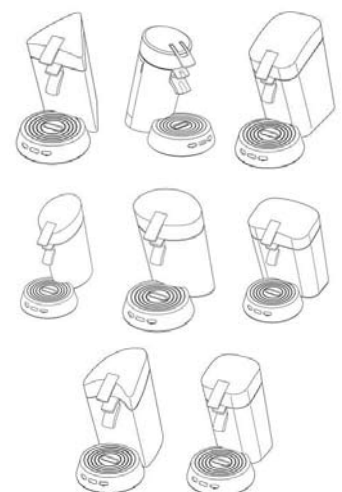
directions without the shoe detaching itself from the ground.



Above right: US patent no. 5,255,452. Above: The protected technology was first used in the *Smooth Criminal* video clip. This song was featured on the CD 'Bad'.



Aldi infringes Senseo design



Discount grocery chain Aldi must withdraw its electronic soap dispenser in the Benelux with immediate effect. The design of the pump dispenser infringes Philips' design and copyright to the well-known Senseo coffee-maker, according to a ruling issued by the District Court in Arnhem on 13 July, 2009.

Above: Aldi's electronic soap dispenser. Right: Philips' Senseo.

Deliberate imitation

The court concluded that the Aldi soap dispenser bears a close resemblance to the Senseo and that Aldi had deliberately imitated the aesthetic qualities of the Senseo to 'freeload' on the familiarity of the coffee-maker.

Design rights since 2001

When the Senseo was launched in 2001, Philips registered it as an International design. The court therefore decided that Aldi had not only infringed Philips' design rights but also its copyright to the appliance.

As well as International design rights to the appearance of the Senseo, Philips also holds Community design rights to a range of Senseo variants to ward off look-alikes.

Domain Names



The battle for Pentium
A company called Pentium-fund has applied to a court in Virginia to prevent the transfer of the domain name pentiumfund.com to Intel. Intel had previously won a WIPO arbitration case which ordered Pentiumfund to hand over the domain name.



Relinquish Unilever
A German citizen, Luca Mueller, has been told to relinquish the domain name unileverservice.com to branded products manufacturer Unilever. On 13 July 2009, a WIPO arbitration panellist ruled that Mueller had registered the name in bad faith.

Munich.eu
The Dutch firm Traffic Web has lost an arbitration case against the city of Munich over the domain name munich.eu. The arbiter ruled that Traffic Web had registered the name for speculative purposes. It was thus deemed to have been registered in bad faith and had to be transferred to the city.



Conflict over Octomom

A dispute has arisen in the US over the trade mark Octomom, based on the nickname the American media bestowed on Nadya Suleman, who gave birth to octuplets in January.

Trade mark registration
In April, Mrs Suleman filed for a trade mark registration for the name Octomom in the US for products such as clothing and diapers, and in connection with television appearances. She is currently holding talks with



The American media has criticised the commercial activities of Octomom. (source: TMZ.com)

the Eyeworks production company, among others, to make a TV show about her family of eight.

Quicker off the mark
But soon after she filed her application, it emerged that the Texan firm Super Happy Fun Fun had been quicker off the mark. Its request to register the word Octomom as a trade mark for computer games and entertainment had been submitted a month earlier. To be continued, no doubt.



Red Bull wins bullfight

Energy drink Red Bull has successfully brought a case against its rival Toro XL, a product manufactured by the Spanish drinks distributor Osborne. On 15 July, a court in The Hague decided that the Osborne bull infringed Red Bull's trade mark rights.

Own brand
Until 2005, Osborne was the Spanish distributor of Red Bull. When Red Bull ended the contract, Osborne launched its own brand, Toro XL.

Ban
The court decided that the two bull trade marks were too similar to each other. Osborne was therefore told it could no longer use its bull image mark for energy drinks in the Benelux. Nor will it be allowed to stock its cans in the Benelux prior to export (to Spain).

Costly case
Osborne was also ordered to pay an eye-watering € 99,591.77 in legal costs.



Challenging multinationals

On 15 July, commercial giants Apple, Microsoft, LG, Philips and Bang & Olufsen were accused of infringing a patent held by Tsera, a small technology firm based in the US.

Patent on the touchscreen
Tsera holds the US patent to a specific technology which controls software by means of a touchscreen display. This is the technology which

is often embedded in the popular iPhone.

David and Goliath
Usually it's the big companies that generate revenue by licensing their patented technologies for mobile communications to smaller firms. But tiny Tsera now seems to be turning the tables on them. The court will ultimately have to decide who's in the right.



Infringing Schiphol's trade mark rights

Optician chain Optitrade's Try Buy See advertising campaign has fallen foul of Schiphol Airport's trade mark rights and its copy-right to the well-known word and image mark See Buy Fly. In a decision handed down on 5 June 2009, the Court of First Instance in Amsterdam ruled that Optitrade must suspend its campaign.

Target
For some reason, Amsterdam international airport's See Buy Fly trade mark seems to attract imitators.

In 2004 Schiphol took firm action against Amsterdam's Schouwburg theatre, which had altered the familiar trade mark to read See Fly Die for its Grand Terrorism Gala on 11 September 2004.



Registering shape marks now tougher



It's becoming increasingly difficult to register the appearance of a product or packaging as a shape mark in Europe. The decision by the EU Court of First Instance not to grant trade mark protection to the shape of the famous Bounty chocolate bar therefore comes as no surprise.

Bounty not protected

On 8 July 2009 the Court of First Instance ruled that the shape of the Bounty bar was not sufficiently distinctive from other chocolate bars and therefore couldn't be registered as a trade mark.

Long line of rejections

The Bounty case is just one in a long line of shape marks rejected by European

courts. In the 1990s, shape marks were very easy to register in several EU countries, but these days most of them fall at the first hurdle. Here are just a few examples.



Dishwasher tablets

Since 2000, Procter & Gamble and its consumer products rival Henkel have been locked in a bitter struggle to register their respective dishwasher tablets as shape marks. To no avail: neither has been given the trade mark protection they've applied for.

BIC lighter

Pen and lighter manufacturer BIC has been trying to get the well-known BIC lighter included in the trade mark register. In 2005 the EU Court of First Instance rejected the application on the grounds that the shape was not sufficiently distinctive.



Corona with lime

Eurocermex, owner of the Mexican beer brand Corona, has been refused protection for its distinctive Corona bottle with a slice of lime in

the neck. According to the ECJ, the shape was devoid of distinctive character for denoting beer.



Werther's Echte

The Court of First Instance and the ECJ came to an identical conclusion in 2004 and 2006 respectively: the shape of the light-brown candy Werther's Echte is insufficiently distinctive to be registered as a trade mark.



So what would pass muster?

So what shapes would be eligible for Community trade mark protection? Answer: something very special indeed.

A good example of this is the famous Rubik's Cube.

In 2008 the EU Trade Mark Office's Cancellation Division ruled that the cube has full trade mark protection in all 27 European Union member states.



Fighting fraudulent invoices

European trade mark owners are regularly sent bogus invoices, often charging them around €1,300 for inclusion in non-existent registers or registers with no legal value. Those who pay the fictitious fee lose their money.

Official-looking paper

The issuers of these scam invoices are shrewd operators. They lift the names and addresses of target companies from the trade mark register, which is open to public inspection. They then send the trade mark owner an invoice on official-looking paper

stamped with impressive logos.

Trade mark registration shown

The "invoice" usually also features the recipient's own trade mark. This gives the impression that the invoice is genuine and somehow linked to the registration of the trade mark. As a result, many unsuspecting owners dutifully sign on the dotted line and part with their cash.

Legal action

Professional associations of trade mark bureaus have successfully taken legal action against these practices in the past.

Unfortunately, there's nothing to stop the same people from popping up again a month later under a different name.

Warning

To help protect you against paying out for a worthless registration, we've included the letterheads of the organisations involved in these scams below. So if you see any of these logos, the rule is: Don't cough up!

And if you come across any "providers" we haven't yet heard of, send us their "invoice" and we'll add it to our collection.

