

The IPKat

Passionate about IP! Since June 2003 the IPKat weblog has covered copyright, patent, trade mark, information technology and privacy/confidentiality issues from a mainly UK and European perspective. The IPKat team is Birgit Clark, Matt Fisher, Mempel, Jeremy Phillips, Mark Schweizer, Tufty the Cat, Annsley Merelle Ward and Neil J. Wilkof. You're welcome to read, post comments and participate in our little community. You can email the Kats [here](#)



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The IPKat lists his 'family' of IP blogs, some of which focus on specific rights, geographical zones, markets or interests

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Tuesday, 6 July 2010

Monsanto: court makes a meal of soya ruling

Argentina may have been thrashed by the Germans in the World Cup, but its soymeal exporters have scored a notable victory on the not-so-inhospitable foreign soil of Luxembourg, following today's ruling of the Court of Justice of the European Union in [Case C-428/08 Monsanto Technology LLC v Cefetra BV, Cefetra Feed Service BV, Cefetra Futures BV, Alfred C. Toepfer International GmbH and, as intervener in support of the defendant, the Argentine State](#) itself. The IPKat had rather stupidly assumed that, since Monsanto had withdrawn its complaint in the underlying proceedings (see [jiplp weblog here](#)) after getting the rough end of the Advocate General's Opinion (click [here](#) for the IPKat's take on this), the Court would quietly go back to doing whatever it does best when it isn't judging IP cases. But no, having gone to the trouble of doing its homework the Court wasn't going to miss the chance to get it marked.



In short Monsanto, the world's biggest seed company, sought to rely on a European patent for its Roundup Ready soy beans as a means of preventing the importation into the European Union of soy meal from Argentina. The question at the heart of the dispute was whether the patent, for soy beans that are resistant to some herbicides (notably Roundup), extends to soy meal made from the patented seeds. Argentina, the world's third-biggest soy bean exporter after Brazil and the US, is one of the few countries in which Monsanto had no patent coverage for its herbicide-resistant seeds.

In 2005-2006 Monsanto had a quantity of soy meal from Argentina impounded in Amsterdam harbour. Tests showed that the impounded product contained some of the patented seed traits, so Monsanto sued the importers for infringement. A Dutch court, hearing the dispute in 2008, sought the guidance of the Court of Justice. According to the Advocate General, protection for patents that cover genetic sequences was limited to situations in which the genetic information was actually performing the functions described, which it wasn't doing in the case of soy beans which had been turned into meal. Today the Court of Justice ruled as follows:

"1. Article 9 of [Directive 98/44](#)... on the legal protection of biotechnological inventions is to be interpreted as not conferring

Not just any old IPKat

Every so often, this feline creeps into the limelight

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Ancient posts, going back to June 2003

The IPKat's cousins: some IP-friendly blogs for you

[Afro-IP - african intellectual property law, practice and policies](#)

[Contralesa on RSA's Traditional Knowledge Bill](#) - Contralesa met recently to discuss a number of developments including South Africa's Intellectual Laws Amendment Bill (Traditional Knowledge Bill). The fol...

[PatLit: patent litigation law, practice and strategy](#)

[Are communications with Indian patent agents privileged?](#) - "Are communications with Indian 'Patent Agents' privileged under the Evidence Act, 1872?" That's the title of a *very recent post *on SPICY IP by Prashant ...

[jiplp](#)

[Mars v Nestlé: protection of colour marks in Australia](#) - Authors: Tim Golder and Sandi

patent right protection in circumstances ... in which the patented product is contained in the soy meal, where it does not perform the function for which it is patented, but did perform that function previously in the soy plant, of which the meal is a processed product, or would possibly again be able to perform that function after it had been extracted from the soy meal and inserted into the cell of a living organism.

2. Article 9 of the Directive effects an exhaustive harmonisation of the protection it confers, with the result that it precludes the national patent legislation from offering absolute protection to the patented product as such, regardless of whether it performs its function in the material containing it.

3. Article 9 of the Directive precludes the holder of a patent issued prior to the adoption of that directive from relying on the absolute protection for the patented product accorded to it under the national legislation then applicable.

4. Articles 27 and 30 of [\[TRIPS\]](#)... do not affect the interpretation given of Article 9 of the Directive".

The IPKat is fascinated to know what stratagems Monsanto will adopt next, given that this ruling cannot be appealed and is applicable across all 27 European Union Member States. Within its sector, Monsanto's actions will be carefully studied since not only that company but its competitors have looked to what is now held to be an improperly extended notion of patent protection for their income streams. The company is more IP-savvy than most and is bound to have Plan B, Plan C and Plan D lined up. Merpel says, it's easier to create a soy bean that's resistant to herbicides than a patent that's resistant to soy meal importers ...

Soy meal [here](#)

Why cats shouldn't have soy -- and particularly cheetahs -- [here](#)

Round up [here](#)

Posted by Jeremy at 7/06/2010 12:45:00 PM

 [BOOKMARK](#)    ...



Labels: [biotech directive](#), [ECJ ruling](#), [patent protection](#)

1 comments:

 [James Wagner](#) said...

Hmmm win some loose some I guess.

Monsanto expanded the scope of patent protection for gene patents in Canada on their last trip to our Supreme Court. *Monsanto Canada Inc. v. Schmeiser*, 2004 SCC 34, [2004] 1 S.C.R. 902

I suspect though that Monsanto would wish they had their success in the EU rather than CA given the relative market sizes.

Will this decision lead to countries with weaker patents, or weaker gene based patent protection developing specialization as 'generic crop' exporters?

[Tuesday, July 06, 2010 6:19:00 PM](#)

Montalto (Allens Arthur Robinson, Melbourne) *Mars Australia Pty Ltd (formerly Effem Foods Pty Ltd) v Société des Produits Ne...

IP tango

Uruguay: La Dirección Nacional de la Propiedad Industrial (DNPI) publicó la versión adaptada de la guía de la OMPI titulada "Lo atractivo está en la - Uruguay: La Dirección Nacional de la Propiedad Industrial (DNPI) publicó la versión adaptada de la guía de la OMPI titulada "Lo atractivo está en la form...

At last ... the 1709 Copyright Blog

Isn't it urgent now I've hesitated for so long? - Ordinary people may be forgiven for believing that things usually get more urgent the longer you put them off. Anyone who considers filing a motion for a p...

MARQUES Class 46 Blog

Facebook.me transferred to rightful owner - A WIPO mediator ordered last month that the domain name Facebook.me, obtained during Montenegro's country code top-level domain (ccTLD) .me auction period ...

IP finance ... where money issues meet intellectual property rights

Will LSIP do the trick? - Earlier this month Intellectual Property Strategy Network, Inc. (*IPSN*) and the Innovation Network Corporation of Japan (*INCJ*) *announced *the establish...

Class 99

Grupo Promo v PepsiCo: a case note - Those readers of Class 99 who subscribe to the European Intellectual Property Review (*EIPR*) will be pleased to note that it contains a contribution from ...

The SPC blog

ECJ rules on Aranesp reference this Thursday - This coming Thursday, 2 September, sees the handing down by the Court of Justice of the European Union of its ruling in Case C-

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66/09 *Kirin Amgen. *This is...

SOLO Independent IP Practitioners

End of Lawyers and the Legal Services Act and Impact on Law Practice - In a recent blog post 'End of Lawyers and the Legal Services Act' I mentioned some of the current challenges facing those of us that run law firms. These...

The Kat that tweets! Current followers: 1,178

Glad I won't be drinking alone at the Old Nick <http://tinyurl.com/57agez> 5 till 6pm this afternoon. If you're an IP enthusiast, do join us! [about 17 hours ago](#)

Trying to resist the feeling of self-satisfaction of seeing that PatLit has posted on this case <http://tinyurl.com/2wtwt8z> before PatentlyO [about 23 hours ago](#)

@trevolafoam If you're in Abertay for the Digital Spark-IP conference, can you send a note I can publish on my blog? It looks a good event [about 23 hours ago](#)

@TGraulund I'll be in Berlin for the MARQUES meeting and definitely available for a drink, plus some serious TM discussions :-) [about 23 hours ago](#)

If anyone wants to join me for a little refreshment this afternoon, I'm at the Old Nick between 5pm and 6pm <http://tinyurl.com/57agez> [1 day ago](#)

[Click here to hear the IPKat tweet!](#)

Looking for fun? If not, you can always try one of these ...

31 August to 17 September 2010: Full programme of Foundation & Advanced Level revision courses for the November 2010 JEB examinations, Milton Keynes.
Run by JDD Consultants. For more information click [here](#).

1 to 2 September 2010: "Digital Spark--IP in the digital creative industries", Abertay University,

Dundee, Scotland. Further details [here](#).

7 September 2010: "How to Write an Effective IP Press Release", an IPKat seminar, hosted by Collyer Bristow, Central London. Click [here](#) for details [see also 5 October ...].

7 September 2010: US "Basic" Patent Law Seminar for Administrators/Paralegals.
Speaker: Mark D. Simpson, Saul Ewing LLP. Organised by Intellectual Property Administrators Group (IPAG). For full programme of topics/booking form see: CIPA website [here](#).

8 September 2010: Cloud Industry Forum, hosted at Microsoft's offices at 100 Victoria Street, London SW1E 5JL -- and it's absolutely free! Further details [here](#).

9 to 11 September 2010: ALAI Study Days, dedicated this year to the duration of copyright and neighbouring rights. Location: Vienna. Further details available [here](#)

10 September 2010: closing date for applications for three Doctoral positions at the University of Leuven (details [here](#)).

10 September 2010: FICPI's Munich Forum is holding a new **Session 7.3 on Top Level Domains -- Enforcement of Rights**. Venue: Hotel Bayerischer Hof, Munich. Forum information and registration details available [here](#).

14 to 17 September 2010: "MARQUES Reloaded", the 24th **MARQUES Annual Conference**, Berlin. Further details are now available from the MARQUES website [here](#).

15 September 2010: Intellectual Property Hot Topics seminar, hosted by the Babraham Institute in the Hardwick Room, Cambridge, England. Organised by the BioIndustry Association. Further details [here](#).

15 to 18 September 2010: CEIPI

Pre-Preparatory Seminars for the EQE (papers D, C and AB).

The C paper seminar features the UK's own Susan Kirsch (Carpmaels & Ransford) and Bill Chandler (EPO Boards of Appeal; co-author of the C-Book). Essential aspects of the examination(s) with practice exercises interactively in small groups. For the more adventurous, courses available in English in Gothenburg, Milan and Warsaw - for the masochistic, in French in Paris. Details [here](#).

15 to 18 September 2010:

Annual Conference of GRUR, the German Association for the Protection of Intellectual Property, to be held in Hamburg. Further details can be found [here](#).

21 September 2010: Handbags

at Dawn, the annual IP and Fashion conference, venue: Central London. Organised by CLT. Sponsored by [Fashionista-at-Law](#). Further details are available [here](#).

21 September 2010: "Strategies for Optimising the Value of Your Portfolio", London, UK.

Organised by LexisNexis. Programme details [here](#); register online [here](#).

22 September 2010:

Obviousness in Pharmaceuticals and Biotechnology in the US. CIPA CPD seminar. Further particulars are available [here](#).

24 to 26 September 2010:

Geographies of Intellectual Property", second Annual Workshop of the International Society for the History and Theory of Intellectual Property ([ISHTIP](#)), American University, Washington DC.

30 September to 1 October 2010: "IP in the New Decade",

CIPA Congress 2010. Venue: Lancaster London Hotel, England. As always, a cerebrally stimulating and professionally valuable event. Details from the CIPA website [here](#) or email CIPA [here](#).

30 September 2010: IPAG 7th Annual Conference for

Administrators and Paralegals, organised by IPAG and covering a full day of IP topics (+ 10th Anniversary Gala Dinner). Booking form and full details [here](#).

27 September to 1 October: 15 Day Integrated D & C training for EQE 2011: Week 3.

Organised by DeltaPatents; venue, Eindhoven, NL. Click [here](#) for further details.

1 October 2010: P6 final practice and re-sitter revision course, Milton Keynes (tutored by Nigel Frankland). For more information click [here](#).

3 to 6 October 2010: AIPPI World Intellectual Property Congress, Palais des Congres, Paris. Details, as available, will be posted on the conference website [here](#).

5 October 2010: "How to Write an Effective IP Press Release", an IPKat seminar, venue to be confirmed, but somewhere in Central London. Click [here](#) for details.

7 October 2010: UNION (a.k.a. UEPIP, a.k.a. Union of European Practitioners in Intellectual Property) **Round Table**, Torino, Italy. Further details [here](#).

19 and 20 October 2010: WIPO Advanced Workshop on Domain Names Dispute Resolution: update on practice and precedents, held at WIPO, Geneva. Details available [here](#).

20 October 2010: Intellectual Property and Finance: exploiting and explaining the financial dimensions of IPRs. Venue: somewhere in Central London. Organised by CLT. IPKat team member Jeremy is in the chair. Supported by the [IP Finance](#) weblog. Further details available [here](#).

21 and 22 October 2010: WIPO Arbitration Workshop, held at WIPO, Geneva. Details available [here](#).

4 November 2010: "Patent Protection and Competition Law", held at the Radisson Edwardian Mountbatten Hotel,

London WC2H 9HD. Organised by LexisNexis Conferences and Training. Stellar cast and keynote address by Lord Justice Jacob. For full programme and booking details click [here](#).

15 and 16 November 2010: 1.5 day visit to OHIM, with detailed programme of topics organised by IPAG. For more information click [here](#).

15 to 19 November: CEIPI Preparatory Seminars for the EQE (papers AB and/or C). Experienced tutors (working in industry, private practice, or the EPO) cover essentials of the examination(s) and more, interactively in small groups. Includes a mock examination and oral proceedings. Details [here](#).

16 and 17 November 2010: Fourth Annual Standards and Patents Conference, organised by IBC Legal Conferences: venue, Crowne Plaza London -- St James. Outstanding panel of speakers. Sponsored by the IPKat and PatLit weblogs. Click [here](#) for programme details and registration.

22 and 23 November 2010: IPR in China, organised by IBC Legal (the conference is about China but the venue is London, at the Millennium Hotel London Knightsbridge). Programme and booking details [here](#). **10% discount for IPKat readers who quote reference KW8070IPKL.**

26 to 27 November 2010: Special CEIPI course on Paper C (Opposition) of the EQE for "multiple resitters". English and German courses by C-Book authors Bill Chandler and Hugo Meinders. Tackles the problems encountered in past papers interactively in small groups to help you pass this sometimes unpredictable exam. A small mock exam is included. Details [here](#).

6 to 7 December 2010: International Patent Litigation, organised by IBC Legal. Venue: Crowne Plaza London -- St James. Programme and booking details [here](#). **10% discount for IPKat readers quoting reference**

KW8093IPKL.

7 to 8 December 2010:
International Copyright Law,
organised by IBC Legal. Venue:
Millennium Hotel London
Knightsbridge. Programme and
booking details [here](#). **10%
discount available to IPKat
readers who quote reference
KW8109IPKL.**

8 December 2010: IP and Music
-- a brand new CLT conference
programme. Venue, Central
London; in the chair, IPKat team
member Jeremy. Details still in
the air ...

2011

**10 to 15 January 2011: EQE
revision courses**, Milton Keynes
(run by JDD Consultants). For
more information click [here](#).

**10 to 14 or 25 to 29 January
2011: CEIPI Preparatory
Seminars for Paper D of the
EQE.** Experienced tutors (working
in industry, private practice, or
the EPO) cover all the essential
aspects of the examination and
more, interactively in small
groups. Details [here](#).

**3 to 4 February 2011: CEIPI
"Cramming Course" for Paper C
of the EQE.** Put the last minute
polish on your knowledge of
Paper C with a mock examination
(C 2010) and a review and
discussion with an experienced
tutor (English and German
courses by C-Book authors Bill
Chandler and Hugo Meinders).
Details [here](#).

**26 April 2011: World
Intellectual Property Day** -- so
party!

**29 and 30 April 2011: The
Annual Fordham University
Intellectual Property
Conference**, New York. Details
will eventually be posted [here](#).
Not to be missed!

**14 to 18 May 2011: 133rd
annual International Trademark
Association Meeting**, San
Francisco, California. Details,
once available, will be posted on
the INTA's website [here](#).

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* Number 1 in the 2010 **Top Copyright Blog** list compiled by the Copyright Litigation Blog, July 2010

* Selected by United States Library of Congress for inclusion in its historic collections of Internet materials related to Legal Blawgs 2010

* Top Patent Blog poll 2009: 3rd out of 50 in the "Favourite Patent Blog" poll and 2nd out of 50 in the "Most-read" poll

* *ComputerWeekly* IT Law and Governance Blog of the Year 20 August 2008

* **Best of the Blogs**, *Times Online*, 21 August 2008

* Listed as one of *Managing Intellectual Property* magazine's Fifty Most Influential People of 2005


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How do you feel about loud, insistent music at IP social events?

It's great since it saves the cho

It's a monstrosity that should b

It's best deployed later, once p

I wouldn't mind, so long as I co

Votes so far: 172

