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International Intellectual Property Law

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I. Patents*

A. UNITED STATES

1. *U.S. Supreme Court*

On January 9, 2007, the Supreme Court held that declaratory judgment jurisdiction exists for a patent licensee to challenge the validity of a patent while continuing to pay royalties in performance of its license agreement.¹ MedImmune, a licensee in good standing under a patent owned by Genentech, brought a declaratory judgment action seeking a

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1. MedImmune, Inc. v. Genentech, Inc., 127 S. Ct. 764 (2007).

declaration that the licensed patent was invalid, not infringed, and unenforceable.² Relying on Federal Circuit precedent,³ both the District Court and the Federal Circuit held that because MedImmune was in compliance with the license terms, there was no actual controversy as required by the Declaratory Judgment Act.⁴

The Supreme Court reversed, holding that a non-repudiating licensee is not precluded from bringing a declaratory suit, at least where the patent owner has threatened, implicitly or explicitly, to enforce the patent upon nonpayment of royalties. Under such circumstances, the licensee is effectively coerced to pay royalties due under the license agreement.⁵

On April 30, 2007, the Supreme Court decided *Microsoft Corp. v. AT&T Corp.*⁶ AT&T sought relief under Section 271(f) of the Patent Act⁷ for alleged infringement involving Microsoft's Windows computer software, which Microsoft "first sent from the United States to a foreign manufacturer on a master disk, or by electronic transmission," and which was "then copied by the foreign recipient for installation on computers made and sold abroad."⁸ In holding for Microsoft, the Supreme Court emphasized that the accused Windows software could not infringe AT&T's patent prior to its installation on a computer.⁹

The allegedly infringing component—the computer software sent from the United States—is not itself installed on any foreign computer abroad, but rather is copied and the foreign-made copies are installed abroad. "Because Microsoft does not export from the United States the actual copies that are installed" on computers abroad, "it does not 'suppl[y] . . . from the United States' 'components' of the relevant computers, and therefore is not liable under § 271(f) as currently written."¹⁰ In reaching this conclusion, the Supreme Court relied heavily on the presumption against extraterritoriality in the interpretation of United States law.¹¹ The Court left it to Congress to make "any adjustment of § 271(f) it deems necessary or proper."¹² The *Microsoft* decision creates an apparent loophole in current law whereby companies that create software code in the United States and export that code to foreign countries for copying and subsequent installation are not liable for infringing U.S. patents.

2. *Id.* at 768, 770.

3. *Gen-Probe Inc. v. Vysis, Inc.*, 359 F.3d 1376, 1381 (Fed. Cir. 2004) (holding that a patent licensee in good standing cannot establish an Article III case or controversy with regard to the patent's validity, enforceability, and scope because the license agreement "obliterate[s] any reasonable apprehension" that the licensee will be sued for infringement).

4. 28 U.S.C. § 2201(a) (2007).

5. *MedImmune, Inc.*, 127 S. Ct. at 774-75.

6. *Microsoft Corp. v. AT&T Corp.*, 127 S. Ct. 1746 (2007).

7. 35 U.S.C. § 271(f)(1) provides that infringement of the United States patent laws occurs when an alleged infringer supplies from the United States a patented invention's components for combination abroad.

8. *Microsoft Corp.*, 127 S. Ct. at 1750.

9. *Id.* at 1750-51.

10. *Id.* at 1751.

11. *Id.* at 1758-59.

12. *Id.* at 1751. *See also id.* at 1759.

2. Federal Circuit

In *In re Seagate Technology, LLC*, the Federal Circuit addressed *en banc* whether a party's decision to rely on advice of opinion counsel as a defense to an allegation of willful infringement should extend waiver of the attorney-client privilege on the subject matter of the opinion to trial counsel.¹³ In determining that the waiver does not extend to trial counsel, the Federal Circuit overruled the statutory duty of care previously announced in *Underwater Devices, Inc. v. Morrison-Knudsen Co.*¹⁴ In *Sandisk Corp. v. STMicroelectronics*, the Federal Circuit considered whether declaratory judgment jurisdiction exists where a company engaged in "friendly" cross-licensing negotiations with another company presents a detailed infringement analysis but nevertheless explicitly states it has no present intention of filing suit.¹⁵ In holding that the infringement analysis creates declaratory judgment jurisdiction, the Federal Circuit noted that the Supreme Court in *MedImmune* had rejected its previous two-part "reasonable apprehension of suit test" for declaratory judgment jurisdiction.¹⁶

B. EUROPE

A flurry of activity in the last weeks of 2006 does not seem to have led to progress on the European Patent Litigation Agreement (EPLA). The IP legal community is in favor of the agreement, but the political climate is opposed.¹⁷ An Interim Legal Opinion of the Legal Service of the EU, prepared at the request of the President of the European Parliament, advises that the EPLA is invalid because it purports to be an agreement of EU member states on a subject that the Community has occupied.¹⁸ In particular, the EPLA was considered both to duplicate and to conflict with Directive 2004/48¹⁹ and the Brussels Regulation.²⁰

In the last days of March 2007, two conflicting decisions in England and Germany highlighted the need for a central, or at least centrally coordinated, system for patent litigation.²¹ On March 29, 2007, the European Commission issued a Communiqué out-

13. *In re Seagate Tech., LLC*, 497 F.3d 1360 (Fed. Cir. 2007).

14. *Id.* at 1371; *Underwater Devices, Inc. v. Morrison-Knudsen Co.*, 717 F.2d 1380 (Fed. Cir. 1983).

15. *Sandisk Corp. v. STMicroelectronics*, 480 F.3d 1372, 1374-76 (Fed. Cir. 2007).

16. *Id.* at 1380-83. See *MedImmune, Inc.*, 127 S. Ct. 764.

17. See, e.g., Charlie McCreavy, Eur. Comm'r for Internal Mkt. & Servs., EU Patent Strategy, (Dec. 7, 2006), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/06/786&format=PDF&aged=1&language=EN&guiLanguage=en>.

18. Interim Legal Op., 2006 S.J. 0844, available at <http://www.managingip.com/pdfs/epl.pdf>.

19. Council Directive 195/16, Enforcement of Intellectual Property Rights, 2004 O.J. (L 157) 45-86 (E.C.). Corrigendum to Directive 2004/48/EC, 2004 O.J. (L 195) 16-25 [hereinafter Council Directive].

20. Council Regulation 44/2001, Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, 2000 O.J. (L 12) 1-23 (EC). Corrigendum to Council Regulation 44/2001/EC, 2001 O.J. (L307/28).

21. *Eur. Cent. Bank v. Document Sec. Sys. Inc.*, [2007] EWHC (Pat) 600 (Eng), *aff'd*, [2008] EWCA (Civ) 192; see also Bundespatentgericht [BPatG] [Federal Court for Patent Matters] Mar. 27, 2007, docket no. 1 Ni 5/06 (EU), English translation available at http://www.documentsecurity.com/news/pdf/53420_OPPO_ENG_FINAL.pdf. (last visited Oct. 31, 2007).

lining proposals for the reform of the patent system in the European Union.²² The Commission acknowledges that the translation question is a major issue but takes no clear position.

A recently-published decision of an EPO Board of Appeals (Board)²³ addresses the patentability of business methods and other non-statutory subject matter. The Board vehemently criticized the approach of the U.K. Court of Appeals in *Aerotel / Macrossan*.²⁴ Procedurally, the Board held that an ordinary three-member Board of Appeals is not required to refer a question to the Enlarged Board of Appeals unless the ordinary Board needs to depart from an earlier holding of the Enlarged Board.

In October 2007, the French Senate, following a vote by the National Assembly the previous month, approved²⁵ the London Agreement, under which various European Patent Convention countries agree not to require full translations of granted European Patents into their own language.²⁶ This Agreement will come into force four months after France deposits its instrument of ratification, and will initially apply to France, Germany, Iceland, Latvia, Liechtenstein, Monaco, the Netherlands, Slovenia, Switzerland, and the UK. Denmark and Sweden have parliamentary approval but have not yet deposited instruments of ratification.²⁷

C. CHINA

The State Intellectual Property Office (SIPO) now receives the third highest number of patent applications in the world, after the United States and Japan.²⁸ In October 2007, a revised draft of the Patent Law was submitted to the State Council for review before being submitted to the Standing Committee of the National People's Congress for adoption.²⁹ The law is likely to be passed in 2008.

Commentators are still trying to understand the decision of the Wenzhou Intermediate People's Court issued on September 29, 2007, in which damages in the amount of RMB 883.6 million (\$117 Million USD) were awarded against a Schneider Electric joint venture for infringement of a patent held by Chint Group with respect to a miniature circuit

22. *Communication from the Commission to the European Parliament and the Council: Enhancing the Patent System In Europe*, COM (2007) 165 final (Mar. 4, 2007), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0165:FIN:EN:PDF>.

23. European Patent Office [EPO], Duns Licensing Associates, EPO Case No. T 0154/04 (Nov. 15, 2006).

24. *Macrossan & Acrotal, Ltd.*, [2006] EWCA Civ 1371, (combined cases of *Aerotel Ltd. v. Telco Holdings Ltd.*, *In re Patents Act of 1977*, and *In re Patent Application GB 0314464.9 ex rel Neal William Macrossan*).

25. Law No. 2007-1477 of Oct. 17, 2007, *Journal Officiel de la Republique Francaise [J.O.] [Official Gazette of France]* Oct. 18, 2007, p.17170, available at <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=MAEX0760761L> (last visited Mar. 22, 2008).

26. London Agreement, O.J. EPO 2001, 549, available at [http://documents.epo.org/projects/babylon/eponet.nsf/0/595FE5E1FC71DD4EC12572BC0058E29D/\\$File/Agreement_17102000.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/595FE5E1FC71DD4EC12572BC0058E29D/$File/Agreement_17102000.pdf) (last visited October 31, 2007).

27. European Patent Office, Status of Accession and Ratification, <http://www.epo.org/patents/law/legislative-initiatives/london-agreement/status.html> (last visited Mar. 22, 2007).

28. *China Ranks World's 3rd in Handling Patent Applications*, CHINA VIEW, Oct. 18, 2007, http://news.xinhuanet.com/english/2007-10/18/content_6902673.htm.

29. *China's Revised Draft of Patent Law Submitted for Examination*, ASIA PULSE, Oct. 30, 2007, available at <http://www.lexisnexis.com>.

breaker.³⁰ A copy of the decision is not yet available; Chinese courts sometimes do not release the lower court decision to the public if either the appeal period has not yet expired or a decision is under appeal. Schneider lost its initial challenge to the validity of this patent before the SIPO and has now appealed in connection with that challenge to the Beijing No. 1 Intermediate People's Court. This appellate court has in the past occasionally overruled the SIPO with respect to a patent ruling.³¹ On September 7, 2007, the Beijing Higher People's Court upheld a decision from the Intermediate People's Court in Pfizer's favor with respect to the validity of its patent for sildenafil, a product treating erectile dysfunction (as used in Viagra).³²

D. RUSSIA³³

Effective January 1, 2008, Russia's existing patent laws were replaced by the new Part IV of the Russian Civil Code.³⁴ New Part IV contains many changes to Russia's patent law, although the overall substance of the law remains unchanged. Under the new law, utility patents will be granted for ten years instead of five.³⁵ Design patents will be granted for fifteen years instead of ten.³⁶ Additionally, Russia's amended Code of Administrative Offenses took effect on May 13, 2007. It expanded the scope of unfair competition claims to expressly include the misuse of intellectual property.³⁷ Criticism of Russia's patent enforcement efforts continues. Historically, there have been very few cases interpreting Russia's patent laws, and there is no caselaw as of January 2008 when the new Part IV of the Civil Code took effect.

It is possible, however, to enforce patent rights in Russia. For example, on April 25, 2007, a Moscow District Court ruled in favor of a patent owner in a patent infringement case against the Russian pharmaceutical company Veropharm.³⁸ The court awarded the patent holder three million rubles in damages and 800 thousand rubles as compensation for moral harm.³⁹ The court also prohibited any further distribution of a drug that was based on the patent.⁴⁰ It appears that this was one of the first Russian patent cases in which both damages and compensation for moral harm were awarded.

30. *Did Schneider Electric Infringed [sic] Its Own French Patent In China?*, IP DRAGON, Oct. 5, 2007, available at <http://ipdragon.blogspot.com/2007/10/did-schneider-electric-infringed-its.html>.

31. *Pfizer Ireland Pharmaceuticals v. Patent Reexamination Bd. Of State Intellectual Prop. Office*, (Beijing No. 1 Interim. People's Ct., June 2, 2006).

32. See generally Tony Chen, *Insider Analysis: Defending IP in China Lends Vigor to Patent Process, Viagra Case Demonstrates*, PHARMASIA NEWS, Nov. 5, 2007, available at <http://fdcalerts.typepad.com/asia/2007/11/insider-analysis.html> (last visited Mar. 17, 2008).

33. For additional information on changes to Russia's intellectual property law, see RUSSIA in this volume.

34. *Grazhdanskii Kodeks RF [GK] [Civil Code] Part IV* (Russ.), No. 230-FZ (Dec. 18, 2007) [hereinafter Federal Law No. 230 FZ].

35. *Id.*

36. *Id.*

37. *Grazhdanskii Kodeks RF [GK] [Civil Code] Part IV*, (Russ.) No. 45-FZ (Apr. 9, 2007) [hereinafter Federal Law No. 45 FZ].

38. *Sofuzpatent Releases Litigation Practice News*, SKRIN MKT. & CORP. NEWS, June 28, 2007, available at <http://www.lexisnexis.com>.

39. *Id.*

40. *Id.*

Russia's bid to join the World Trade Organization (WTO) remained front and center in 2007. Russia's patent laws often are cited as a reason to delay its WTO membership; however, New Part IV of the Russian Civil Code is an attempt to address those criticisms.⁴¹

II. TRADEMARK

A. UNITED STATES*

In *Louis Vuitton Malletier, S.A. v. Haute Diggity Dog, LLC*⁴², the Fourth Circuit became the first Circuit Court of Appeals to interpret the 2006 Trademark Dilution Revision Act's (TDRA) six-factor test for dilution by blurring.⁴³ The defendant, Haute Diggity Dog, LLC (HDD) sells a line of pet chew toys and beds under names meant to parody high-end luxury brands. At issue here was HDD's line of "Chewy Vuiton" dog toys in the shape of miniature handbags meant to evoke the Louis Vuitton Malletier brand. Louis Vuitton Malletier, S.A. (LVM) filed suit in Virginia in 2002 claiming, inter alia, trademark dilution under 15 U.S.C. §1125(c). The District Court entered judgment in favor of HDD, holding that parody is a complete defense to a dilution claim.⁴⁴

While the Fourth Circuit affirmed the district court's decision, it noted that: (1) the District Court had failed to consider the six factors set forth in the TDRA⁴⁵ to determine whether there was dilution by blurring; and (2) HDD's parody/fair use defense was inapplicable since HDD was using "Chewy Vuiton" as a trademark for its products.⁴⁶ The Court explained that while the TDRA does provide that fair use is a complete defense to dilution by blurring, the fair use defense does not extend to parodies used as a trademark.⁴⁷ Rather than remand the case, the Fourth Circuit undertook the TDRA six factor analysis and affirmed the district court's decision, holding that LVM had "failed to make out a case of dilution by blurring by failing to establish that the distinctiveness of its marks was likely to be impaired by Haute Diggity Dog's marketing and sale of its 'Chewy

41. In November 2006, after President Vladimir Putin submitted the IP bill to the Russian parliament, the United States indicated its support to Russia's admission to the WTO. See *U.S. Paves Way for Russia WTO Entry*, BBC NEWS, Nov. 19, 2006, available at <http://news.bbc.co.uk/2/hi/business/6163008.stm> (last visited Mar. 22, 2008); *Russia-U.S. WTO Protocol Conducive for Mutual Trade—Putin*, RIA NOVOSTI NEWS AGENCY, Nov. 19, 2006, available at <http://en.rian.ru/russia/20061119/55779900.html> (last visited Mar. 22, 2008).

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42. See *Louis Vuitton Malletier, S.A. v. Haute Diggity Dog, LLC*, 507 F.3d 252 (4th Cir. 2007).

43. 15 U.S.C. § 1125(c)(2)(B)(i)-(vi) (2007).

44. See *Louis Vuitton Malletier, S.A. v. Haute Diggity Dog, LLC*, 464 F. Supp. 495 (E.D. Va. 2006).

45. Under 15 U.S.C. § 1125(c)(2)(B), the six non-exclusive factors that a court may consider to determine whether a mark is likely to cause dilution by blurring are:

(i) [t]he degree of similarity between the mark . . . and the famous mark; (ii) [t]he degree of inherent or acquired distinctiveness of the famous mark; (iii) [t]he extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark; (iv) [t]he degree of recognition of the famous mark; (v) [w]hether the user of the mark . . . intended to create an association with the famous mark; and (vi) [a]ny actual association between the mark . . . and the famous mark.

46. See *Louis Vuitton Malletier, S.A.*, 507 F.3d at 252.

47. *Id.*

Vuiton' products."⁴⁸ The Court observed that because the HDD pet chew toys were imperfect reproductions of the LVM designs and marks intended to mimic and poke fun, they intentionally communicated that they were meant as a parody of the LVM brand and did not diminish the capacity of the LVM marks to identify a single source.⁴⁹

Whether or not Google's "AdWords" program constitutes trademark infringement remained unsettled in 2007. On August 31, 2007, American Blind & Wallpaper Factory, Inc. (American Blind) and Google, Inc. (Google) settled a suit for declaratory judgment that Google filed in 2003 seeking a ruling that its "AdWords" advertising program did not infringe American Blind's trademarks.⁵⁰ Earlier in the year the court had denied Google's motion for summary judgment requesting a finding that its "AdWords" program did not constitute use in commerce for purposes of the Lanham Act.⁵¹ On March 20, 2005, the district court had declined to grant Google's motion to dismiss, refusing to hold that the use of American Blind's trademarks as keywords to trigger third party advertisements did not constitute trademark infringement.⁵²

Meanwhile the Eastern District of Pennsylvania in *J.G. Wentworth, S.S.C. LP v. Settlement Funding* held that the purchase of keywords did constitute trademark use but granted the defendant's motion to dismiss the claim for trademark infringement on the grounds that there was no likelihood of initial interest confusion.⁵³

B. EUROPE*

The Grand Chamber of the European Court of Human Rights (Grand Chamber) made a rare foray into the intellectual property arena when it was asked to resolve the issue of whether a trademark and trademark application were protected as fundamental property rights under Article 1 of Protocol 1 of the European Convention on Human Rights (Convention).⁵⁴ Reversing in part an earlier decision of the Second Section of the European Court of Human Rights dismissing the complaint, the Grand Chamber noted that intellectual property "would constitute a possession within the meaning of the Convention and enjoy fundamental property rights protection."⁵⁵ The Grand Chamber demonstrated that a trademark has many elements of a property right by citing to several public law instruments, including the Madrid Agreement and Protocol and Community Trademark Regulation.

48. *Id.* at 268.

49. *Id.*

50. See Jessica Sachs, *Google and American Blinds Settle Keywords Dispute*, INTA BULLETIN, (Int'l Trademark Ass'n. New York, N.Y.), Oct. 15, 2007.

51. See *Google Inc. v. American Blind & Wallpaper Factory, Inc.*, No. C 03-5340 JF (RS) 2007 WL 1848665 (N.D. Cal. June 18, 2007).

52. *Id.*

53. See *J.G. Wentworth, S.S.C. LP v. Settlement Funding L.L.C.*, No. 06-0597, 2007 WL 30115 (E.D. Pa. Jan. 4, 2007).

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54. See *Anheuser-Busch Inc. v. Portugal*, App. No.73049/01, Eur. Ct. H.R., (2005), [http://cmiskp.echr.coe.int/\[\[tkp197/viewhbkcm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=60433&sessionId=6379844&skin=hudoc-en&attachment=true](http://cmiskp.echr.coe.int/[[tkp197/viewhbkcm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=60433&sessionId=6379844&skin=hudoc-en&attachment=true)

55. Burkhart Goebel, *ECHR Extends Fundamental Property Rights Protection to Trademark Applications*, INTA BULLETIN, (Int'l Trademark Ass'n. New York, N.Y.), Feb. 15, 2007.

Moreover, the Grand Chamber asserted that a trademark application also constituted a possession under the Convention given that it could be assigned, used as a security interest, and had, in some cases, significant financial value. The Grand Chamber also observed that in many legal systems the publication date of a trademark application serves as date from which damages begin to accrue under a claim of trademark infringement.⁵⁶ Based on that reasoning, the Grand Chamber held that a trademark application cannot be nullified based on a later competing right, thus ensuring that the priority principle remains the basic principle for the resolution of disputes between conflicting intellectual property rights.⁵⁷

On April 25, 2007, the European Parliament voted in favor of the proposed directive of the Parliament and European Council on criminal measures to enforce intellectual property rights (Criminal Measures Directive).⁵⁸ Three years earlier, the Parliament and Council had adopted Directive 2004/48/EC on the enforcement of intellectual property rights, which only addressed civil enforcement.⁵⁹ Under the Criminal Measures Directive:

[M]ember states [will] be required to implement legislation that [will] treat all intentional infringements of intellectual property rights on a commercial scale . . . as criminal offenses, punishable by any combination of confiscation of the counterfeit goods, closure of establishments used for counterfeiting purposes, imprisonment, a ban on engaging in commercial activities, and publication of the verdict.⁶⁰

The Criminal Measures Directive sets “minimum penalties as well as a maximum penalty of at least four years’ imprisonment in the event that organized crime was involved or where the infringement involved a health and safety risk along with a maximum fine of at least € 300,000.”⁶¹ After passing in Parliament, “the proposed [C]riminal [M]easures [D]irective now awaits approval of the 27 European Union governments to be formally adopted by the Commission.”⁶²

C. CHINA*

Chinese courts normally deal with more trademark cases involving foreigners than other forms of intellectual property, and this year was no different. In December 2006, the Shanghai Higher People’s Court disposed of the appeal by Shanghai Xingbake Café Limited by upholding the No. 2 Intermediate Court’s ruling in favor of Starbucks.⁶³ A

56. *Id.*

57. *Id.*

58. Christina Sleszynska, *European Parliament Amends Draft Criminal Sanctions Directive*, INTA BULLETIN, (Int’l Trademark Ass’n. New York, N.Y.), June 1, 2007.

59. Council Directive, *supra* note 19.

60. Susan Brushaber, *Fighting Pirates: The EU Combats Piracy*, 36 INT’L L. NEWS 14, 16 (Fall 2007).

61. *Id.* at 17.

62. *Id.*

* Author, China Trademark Section: Paul Jones, Jones & Co., Toronto.

63. Shanghai Xingbake Kafeiguan Youxian Gongsì v. Xingyuan Gongsì (Starbucks Corp.), Hu Gao Min San (Zhi) Zhong Zi Di 32 Hao (File No. 32) (Shanghai Shi Gaoji Renmin Fayuan [Shanghai Higher People’s Court] Dec. 20, 2006). “Xingbake” is the name that Starbucks uses in Chinese characters.

similar judgment on an appeal by a Qingdao company was also dismissed.⁶⁴ It was reported in May 2007 that Shanghai Xingbake Café Limited had changed its name to “Shanghai Fang Yun Coffee Ltd.”⁶⁵

While some press stories have considered these cases as standing for a stronger enforcement regime in China, in fact Starbucks Corporation had registered its Chinese character mark well before the infringers registered their respective corporations. Thus, a prior trademark registration trumped a later corporate name registration. This proposition is not a novel one in Chinese law.

On May 24 2007, Zhejiang Province Higher People’s Court rendered an instructive decision.⁶⁶ The appellant was a Chinese beverage producer who applied to register its trademark “LANSE FENGBAO” (in Chinese characters) meaning “BLUE STORM” on December 14, 2003. In 2005, Pepsi began a promotional campaign using the very same Chinese characters. One of the posters for the campaign featured four hip, young Chinese on a blue background that also included the familiar Pepsi circle logo. The only wording on the poster was “LANSE FENGBAO” or “BLUE STORM.” The confusion was such that the appellant had its products seized by government authorities in one province, and its distributor in Shanghai refused to handle its product, believing it to be counterfeit. The Chinese company had little choice but to sue Pepsi for trademark infringement. At trial in the Hangzhou Intermediate People’s Court, Pepsi argued that they did not use “LANSE FENGBAO” as an indicator of source (*i.e.*, use it as a trademark), and surprisingly the court accepted this position.

But the appeals court held that Pepsi had used the phrase as a trademark and that the use by Pepsi would cause confusion amongst members of the public. The court awarded RMB 3,000,000 in damages to the Chinese appellant. The fact that Pepsi won in the first instance suggests that Chinese courts are not very biased against foreigners. Secondly, the amount of damages awarded is significant. This case and the award by the Supreme People’s Court in the Yamaha case⁶⁷ of RMB 8.3 million (\$1.1 million USD) suggest that awards by Chinese courts may be on the rise, making it more economically feasible to enforce intellectual property rights. The case emphasizes the importance of China’s first-to-file trademark regime as also demonstrated in the decision of the Beijing No. 1 Intermediate People’s Court against Pfizer regarding the ownership of the common Chinese character name “WEIGE” for Viagra.⁶⁸

64. Xingyuan Gongsi (Starbucks Corp.) v. Qingdao Xingbake Kafei Canyin Youxian Gongsi, Lu Min San Zhong Zi Di 30 Hao (File No. 30) (Shandong Sheng Gaoji Renmin Fayuan [Shandong Province Higher People’s Court] July 5, 2007).

65. Posting of Luo Jing Xiong (Brad) to China Business Law Blog, *Starbucks v. Shanghai Copycat*, <http://chinabusinesslaw.blogspot.com/2007/05/starbucks-v-shanghai-copycat.html> (May 21, 2007, 21:10).

66. Zhejiang Lanye Jiuye Youxian Gongsi v. Shanghai Baishi Kele Yinliao Youxian Gongsi (Shanghai Pepsi Cola Drinks Limited), Zhe Min San Zhong Zi Di 74 Hao (File No. 74), (Zhejiang Sheng Gaoji Renmin Fayuan [Zhejiang Province Higher People’s Court] May 24, 2007).

67. Zhejiang Huatian Gongye Youxian Gongsi (Zhejiang Huatian Industries Ltd.) v. Yamaha Fadongji Zhushi Huishe (Yamaha Engine Corp.), Min San Zhong Zi Di 1 Hao (File No. 1), (Zuigao Renmin Fayuan [Supreme People’s Court] June 5, 2007).

68. Posting of Luo Jing Xiong (Brad) to China Business Law Blog, *Pfizer: Testing the Potency of Chinese IP Law & a Beijing Court*, <http://chinabusinesslaw.blogspot.com/2007/09/pfizer-testing-potency-of-chinese-ip.html> (Sept. 28, 2007, 19:33).

D. RUSSIA*

New Part IV of Russia's Civil Code took effect on January 1, 2008, and completely replaced Russia's previous intellectual property regime, including its copyright, trademark, and other intellectual property laws.⁶⁹ In , which provides for stiffer jail sentences and monetary penalties for trademark infringement, took effect on April 12, 2007.⁷⁰ Finally, Russia's amended Code of Administrative Offenses took effect on May 13, 2007, and expressly provides that unfair competition includes the misuse of intellectual property.⁷¹

Some have criticized Russia's new trademark regime as lacking a uniform infringement standard, and providing for overbroad protection of domain names, commercial designations, and company names.⁷² Other criticism includes observations that Part IV of the Civil Code "contains no provision for the fair use of trademarks, arguably making a simple descriptive or nominative use an infringing act."⁷³ Russian practitioners have suggested that some of these criticisms are "misleading" but agree that a fair use provision should be added to Part IV of the Civil Code.⁷⁴

Trademark owners in Russia gained ground in 2007 as the country continued its progress towards WTO accession. In September, Starbucks opened its first outlet in Moscow after prevailing in a protracted court battle against a notorious trademark "squatter" named Sergei Zuykov, who had previously succeeded in cancelling Starbucks' trademark registration at the Russian trademark office on the grounds of nonuse.⁷⁵ Throughout the year, the courts issued a stream of decisions enforcing the rights of private trademark holders. Many of the disputes involved internet websites in the ".ru" domain, which increased over the previous year by almost 61 percent, numbering 718,236 by the end of 2006.⁷⁶

The Russian government, meanwhile, continued its struggle to reassert control over names historically associated with the state-run economy, such as the well-known vodka trademarks STOLICHNAYA and MOSKOVSKAYA. Acting in the person of a state-run enterprise and its licensee, the Russian government argued that the famous vodka trademarks were fraudulently appropriated by Russian businessman Yuri Shefler and other rob-

* Authors, Russia Trademark Section: Edward D. Manchester and Bruce A. McDonald, Schnader, Harrison, Segal & Lewis LLP, Washington D.C.

69. Federal Law No 230-FZ, *supra* note 34.

70. Grazhdanskii Kodeks RF [GK] [On Amendments to the Russian Federation Criminal Code] Part IV (Russ.), No. 42-FZ, Apr. 9, 2007 [hereinafter Federal Law No. 42 FZ].

71. Federal Law No. 45 FZ, *supra* note 37.

72. Coalition For Intellectual Property Rights (CIPR), *Part IV of The Russian Civil Code, Summary of Trademark Protection Issues*, April 2007, http://www.cipr.org/activities/advocacy/files/CIPR_PartIVSummary_12-06.pdf.

73. *Id.* at 3.

74. Vladimir Biriulin, *A Defense of Part IV of the Civil Code*, 62 INTA BULLETIN 9, (Int'l Trademark Ass'n. New York, N.Y.), May 15, 2007.

75. See generally Andrew Kramer, *He Doesn't Make Coffee, but He Controls 'Starbucks' in Russia* N.Y. Times, Oct. 12, 2005, at C1; *After Long Dispute, a Russian Starbucks*, N.Y. TIMES, Sept. 7, 2007), available at http://www.nytimes.com/2007/09/07/business/worldbusiness/07sbux.html?_r=1&oref=slogin.

76. *Number of Russian Domain Names Grows to 800,000*, RUSSIA & CIS BUS. & FIN. DAILY, Mar. 23, 2007, available at <http://www.lexisnexis.com>.

ber barons in the chaotic privatization of the 1990's.⁷⁷ After an adverse ruling in March 2006 by a U.S. District Court dismissing its complaint against the private successors,⁷⁸ the government has rebounded in other world courts.

In July 2006, the state-sponsored claimants obtained a successful declaration in the Netherlands,⁷⁹ and in April 2007, the state-sponsored claimants overturned an Australian court decision ordering Russian ministries and agencies to search their archives for evidence of the alleged fraud.⁸⁰ In June, the European Court of Human Rights dismissed an action by the Shefler group challenging a 2001 decision by the Russian Supreme Commercial Court to restore ownership to the state.⁸¹ In September, a Moscow court upheld criminal charges brought against Shefler in absentia.⁸²

E. DOMAIN NAME DEVELOPMENTS*

The development of the domain name registration system is a source of increasing concern for trademark holders, particularly: (i) the effects of the application of computer software that automatically registers expired domain names to then park them on pay-per-click portal sites; (ii) the opportunity to register names free-of-charge for a five-day "tasting" period; (iii) the rise in the number of registrars; and (iv) the creation of new generic "Top Level Domains."⁸³

From September 2006 until March 2007 the WIPO Arbitration and Mediation Center (Center) received eighteen challenges under the Sunrise Challenge Policy for .mobi (Sunrise Policy) and the Rules for Sunrise Challenge Policy (Sunrise Rules) and 105 applications under the Premium Name Trademark Application Rules for .mobi (Premium Name Rules).⁸⁴ Similar to the .mobi domain, the .asia domain provides for a special Sunrise registration period for governments, trademark owners, and registered entities. The .asia mechanisms also include reserved names policies, "designed to further curb abusive regis-

77. For the corporate view taken by the SPI Group, the entity controlled by Shefler which owns Stolichnaya, among other brands, see SPI Group, *About SPI Group, History*, <http://www.spi-group.com/about-spi-group/history>.

78. Fed. Treasury Enter. *Sojuzplodoimport v. Spirits Int'l. N.V.*, 425 F.Supp. 2d 458 (S.D.N.Y. 2006).

79. *Yuri Shefler Deprived of Stolichnaya*, KOMMERSANT, June 16, 2006, available at <http://www.kommersant.com/page.asp?idr=500&id=682663>.

80. S.P.I. Spirits (Cyprus) Ltd. v. Diageo Australia Ltd. (No 2) (2007) 155 F.C.R. 150.

81. Press Release, Registrar, Eur. Ct. H.R. Chamber Judgments Concerning Finland, France, Italy, Moldova, the Netherlands, Russia, Spain, the United Kingdom and Ukraine (June 7, 2007), available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=74&portal=hbkm&action=html&highlight=&sessionId=6380899&skin=hudoc-pr-en> (summarizing OAO Plodovaya Kompaniya v. Russia).

82. See, e.g., CIPR, *Summary of Selected IPR-Related News Stories: COURT DEEMS ACCUSATIONS OF ILLEGAL TRADEMARK USE BY U. SHEFLER LEGITIMATE*, Sept. 5, 2007, available at <http://www.cipr.org/news/news.php?nid=77>.

* Author, Domain Name Developments Section: Brechtje Lindeboom, Lovells Paris. This submission is made on a personal title, and the statements contained herein are those of the author alone.

83. Press Release, World Intellectual Property Organization (WIPO), *Cybersquatting Remains on the Rise with further Risk to Trademarks from New Registration Practices* (Mar. 12, 2007), http://www.wipo.int/pressroom/en/articles/2007/article_0014.html.

84. WIPO, *WIPO End Report on Case Administration under the Sunrise Challenge Policy for .mobi and the Premium Name Trademark Application Rules for .mobi*, available at <http://www.wipo.int/amc/en/domains/reports/mobi/report/index.html>.

trations and to create a stable and effective launch.”⁸⁵ A proposal for a .lat domain has been advanced by eCOM-LAC and NIC Mexico, the organizations in charge of pursuing the Internet domain name for Latinos, as the extension to identify Latin America.⁸⁶ Both organizations will present the application to the Internet Corporation for Assigned Names and Numbers (ICANN) for a decision in 2008.⁸⁷

ICANN has received a revised proposal from the Czech Arbitration Court (CAC) to be recognized as one of the official dispute resolution providers under the UDRP. In November 2007, ICAAN called for further public comments on the revised proposal.⁸⁸ As of today, fifty-one country code top level domain (ccTLD) registries have incorporated the UDRP or versions thereof and have designated WIPO Arbitration and Mediation Center to provide domain name dispute resolution services for their respective national ccTLD.⁸⁹

In March 2007, the Whois taskforce sent a final report to ICANN’s Generic Names Supporting Organization (GNSO) Council.⁹⁰ The report includes a proposal called the “Operational Point of Contact” (OPOC). Under OPOC, every registrant would appoint a new operational point of contact, and the registrant’s postal address, city, and postal code would no longer be displayed. Instead, the operational point of contact’s name and contact information would be displayed without referring to the administrative and technical contacts.⁹¹

ICANN has launched an evaluation of domain names that will allow Internet users to test top-level domains in eleven languages.⁹² At present, only the ASCII characters A through Z are available for use in the portions of the domain before the top-level domains. For example, a website with Japanese content can have the first part of its URL in Japanese, but the URL still needs to end in an extension spelled out in ASCII characters, such as .com or .net. ICANN has enabled the evaluation by the insertion into the root of the eleven versions of .test.

85. WIPO, “.asia”, <http://www.wipo.int/amc/en/domains/gtld/asia/index.html> (last visited Mar. 22, 2008).

86. Press Release, NIC Mexico, NIC Mexico has Been Selected as Partner to Pursuit [sic] an Internet Domain for Latinos (July 10, 2007), *available at* http://www.nic.mx/es/Noticias_2?NEWS=226.

87. *Id.*

88. ICANN, ICANN Opens Public Comments on Revised Proposal from the Czech Arbitration Court (CAC) to Become a UDRP Provider, (Nov. 12, 2007), <http://www.icann.org/announcements/announcement-2-12nov07.htm>.

89. WIPO, Domain Name Dispute Resolution Service for Country Code Top Level Domains (ccTLDs), <http://www.wipo.int/amc/en/domains/cctld/>.

90. GNSO, Final Task Force Report On WHOIS Services (Mar. 12, 2007), *available at* <http://gns0.icann.org/issues/whois-privacy/whois-services-final-tf-report-12mar07.htm>.

91. Public comments are invited on the GNSO Council’s WHOIS reports and recommendations. *See* GNSO Consideration of Proposed Changes to Whois, (Oct. 15, 2007), <http://www.icann.org/announcements/announcement-2-15oct07.htm>.

92. ICANN, ICANN Establishes Forum on Allocation Methods for Single-Letter and Single-Digit Domain Names, (Oct. 16, 2007), <http://www.icann.org/announcements/announcement-16oct07.htm>.

III. Copyright

A. UNITED STATES*

Perhaps the most important development of 2007 came on May 1, when the Copyright Royalty Board (CRB) issued its long-awaited final determination of the rates and terms for two statutory licenses—one concerning “digital performances of sound recordings” and the other concerning “the making of ephemeral recordings”—required for “Internet webcasters or broadcast radio simulcasters” that provide streaming music online.⁹³ Predictably, Sound Exchange, the group that collects royalty proceeds for recording artists, copyright owners, and webcasters were far apart in their rate proposals.⁹⁴ Both “agree[d] that the best approach to determining what rates would apply in . . . [the] hypothetical [willing buyer/willing seller] marketplace . . . [was] . . . to look to comparable marketplace agreements;” however, they “disagree[d] about the degree of competition . . . required by law,” with “Sound Exchange . . . championing a marketplace characterized by monopoly power” on its part, while the webcasters argued for “a marketplace characterized by perfect competition.”⁹⁵ The CRB substantially adopted the rate proposal of Sound Exchange.⁹⁶ Some critics have predicted that the decision portends “the imminent death of internet radio.”⁹⁷ The CRB decision has been appealed to the U.S. Court of Appeals for the D.C. Circuit.

B. EUROPE*

2007 has seen the extensive review of the European Community *acquis*⁹⁸ on copyright and related rights. The European Commission intimated that this review is likely to result in a number of wide-ranging policy initiatives and legislative amendments. After extensive study of the collective management of rights,⁹⁹ a European Commission Recommendation of 2005¹⁰⁰ was adopted by Parliamentary resolution on March 13, 2007, calling upon the Commission to propose a Directive overhauling the EU approach. A Commission evaluation was produced, and consultation on initial experience closed July 1, 2007. A Report is expected early in 2008.

* Author, United States Copyright Section: Brian Pandya, Wiley Rein LLP, Washington D.C.

93. See Digital Performance Right in Sound Recordings and Ephemeral Recordings, 72 Fed. Reg. 24,084 (May 1, 2007) (to be codified at 37 C.F.R. pt. 380).

94. See *id.* at 24,088-24,091.

95. *Id.*

96. See *id.* at 24,096.

97. See, e.g., Mark Gibbs, *The Imminent Death of Internet Radio*, NETWORK WORLD, Mar. 23, 2007, available at <http://www.networkworld.com/columnists/2007/032307backspin.html>.

* Author, Europe Copyright Section: Dr. Paul Dougan, West Partnership LLP, Glasgow, United Kingdom.

98. Term used in European Union law to refer to the total body of EU law.

99. KEA European Affairs, *The Collective Management of Rights in Europe: The Quest for Efficiency*, July 2006, available at http://www.europarl.europa.eu/comparl/juri/study/rights_en.pdf. “The study examines the legal framework governing collective management in the field of copyright and neighbouring rights in the European Union, with a particular emphasis on musical works.” *Id.* at 5.

100. Commission Recommendation of 18 May 2005 on Collective Cross-Border Management of Copyright and Related Rights for Legitimate Online Music Services, (EC) 2005/737 of 18 May 2005, 2005 O.J. (L 276) 54, available at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_276/l_27620051021en00540057.pdf.

The ongoing debate on “copyright levies,” that is, compulsory “fair” compensation for private copying, continues in Europe. The argument in favor of levies, generally favored by those in the media and content production industries, is based on the alleged impracticality of mass licensing by the relevant rights holders. But the Commission Recommendation on the Levies was delayed indefinitely on December 14, 2006, and the Commission has not shown interest thereafter.¹⁰¹

The Commission is also evaluating the ‘E-Library’ Directive 2001/29¹⁰² and a report was expected in December 2007. Additionally, the European Parliament resolved to move further towards the creation of a European Digital Library, a proposal that has received wide support.¹⁰³

Two impact studies were due for imminent publication in 2007. Both address the consistently hot topic of “terms” for copyright and related rights. The first looks at the term of protection for phonogram producers and performers, in particular looking at the merits of a longer term. The second focuses on evaluating the current EU rules on calculating the term for co-written musical works. Neither of the reviews are, as yet, complete but both are expected to result in the amendment of Community laws and ultimately of those in member states.

Finally, the availability of criminal sanctions to combat intellectual property offences was also further evaluated this year. A proposal was first published in 2005 for a Directive and Framework Decision on enforcement of IPRs and the criminal law framework respectively.¹⁰⁴ Following amendment, the European Parliament gave the proposed Directive its first reading in April 2007, and it appears increasingly likely that the EU will strengthen criminal sanctions for infringements, mirroring some legislative changes in the United States.

C. RUSSIA*

New Part IV of Russia’s Civil Code took effect on January 1, 2008, and completely replaced Russia’s previous intellectual property regime, including its copyright laws.¹⁰⁵ Among other things, it simplifies the regulation of license agreements.¹⁰⁶ Further, it requires the accreditation of collective management societies by the Russian government.¹⁰⁷ Russia now appears to be one of the few civil code jurisdictions to place all of its intellectual property laws into the civil code.

101. Press Release, Levies Reform Alliance, Industry Condemns Commission Backdown on Reform: Reform of Copyright Levies Abandoned Following Opposition From France (Dec. 13, 2006), available at <http://www.eicta.org/web/news/telecharger.php?idoc=352>.

102. Council Directive 2001/29, 2001 O.J. (L 167/10) 29 (EC).

103. Press Release, EUROPA, Launch of European Digital Library “On Track” (Nov. 28, 2007), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1784>.

104. *Commission Proposal for a European Parliament and Council Directive on Criminal Measures Aimed at Ensuring the Enforcement of Intellectual Property Rights and a Commission Proposal for a Council Framework Decision to Strengthen the Criminal Law Framework to Combat Intellectual Property Offences*, COM (2005) 276 final (July 12, 2005), available at http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0276en01.pdf.

* Author, Russia Copyright Section: Edward D. Manchester and Bruce A. McDonald, Schnader, Harrison, Segal & Lewis LLP, Washington D.C.

105. Federal Law No 230-FZ, *supra* note 34.

106. *Id.*

107. *Id.*

Russia's amended Criminal Code Article 146 took effect on April 12, 2007.¹⁰⁸ Copyright infringement now carries up to six years of imprisonment. Finally, Russia's amended Code of Administrative Offenses took effect on May 13, 2007.¹⁰⁹ Under that law, unfair competition now includes the misuse of intellectual property.

The saga involving *allofmp3.com*, a website that sold pirated music from 2003 to 2005, continued. In August 2007, criminal charges were dismissed against Denis Kvasov, the former head of MediaServices, Inc., which operated the website.¹¹⁰ The court ruled that Russian law did not ban the online sale or use of pirated music during the relevant time, and that "[s]uch a regulation only entered force in September 2006."¹¹¹ The *allofmp3.com* website closed down in July 2007, although the site itself indicates that the service may return in the future.¹¹² The *allofmp3.com* website had been cited as a barrier to Russia's accession to the WTO. In December 2006, various record companies sued MediaServices for \$1.65 trillion in the Southern District of New York.¹¹³ MediaServices filed a motion to dismiss, which is still pending.¹¹⁴

In connection with its bid to join the WTO, the United States and Russia entered into the Bilateral Market Access Agreement on IPR.¹¹⁵ In a side letter to the agreement, Russia agreed to fight optical disc piracy and Internet piracy, protect pharmaceutical test data, and strengthen Russian law and enforcement efforts.¹¹⁶ Russia's progress will be monitored by the USTR in an out-of-cycle review.¹¹⁷ Russia remains on the Priority Watch list for 2008.¹¹⁸

D. CHINA*

The enforcement of China's Copyright Law continues to be problematic. On June 9, 2007, China gave effect to the WIPO Copyright Treaty of 1996 and the WIPO Perform-

108. Federal Law No. 42-FZ, *supra* note 70.

109. Federal Law No. 45-FZ, *supra* note 37.

110. *Moscow Court Clears Businessman of Online MP3 Piracy Charges*, RIA NOVOSTI, Aug. 15, 2007, available at <http://www.lexisnexis.com>.

111. *Id.*

112. Marianna Pustilnik, *Goodbye, Allofmp3.com, Hello, WTO!*, MOSCOW NEWS, July 6, 2007, available at <http://www.mnweekly.ru/business/20070705/55260798.html>.

113. Complaint, *Arista Records L.L.C. v. MediaServices, Inc.*, No. 06 Civ. 15319, 2006 WL 4048297 (S.D.N.Y. Dec. 20, 2006).

114. Reply Memorandum of Law in Support of its Motion to Dismiss, *Arista*, No. 06 Civ. 15319.

115. See Press Release, Office of The United States Trade Rep. (USTR), United States, Russia Sign Bilateral WTO Market Access Agreement: Negotiations on WTO Membership Now Move to the Multilateral Phase, (Nov. 19, 2006), available at http://www.ustr.gov/Document_Library/Press_Releases/2006/November/United_States_Russia_Sign_Bilateral_WTO_Market_Access_Agreement_Negotiations_on_WTO_Membership_Now_Move_to_the_Multilateral_Pha.html (last visited Mar. 22, 2008).

116. Letter from Susan Schwab, Executive Office of the President, USTR, to H.E. German Gref, Minister of Economic Development and Trade, Russian Federation (Nov. 19, 2006), available in English at http://www.ustr.gov/assets/World_Regions/Europe_Middle_East/Russia_the_NIS/asset_upload_file148_10011.pdf (last visited Mar. 22, 2008), available in Russian at http://www.ustr.gov/assets/World_Regions/Europe_Middle_East/Russia_the_NIS/asset_upload_file977_10458.pdf (last visited Mar. 22, 2008).

117. See OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, 2007 SPECIAL 301 REPORT (2007), available at http://www.ustr.gov/assets/Document_Library/Reports_Publications/2007/2007_Special_301_Review/asset_upload_file230_11122.pdf (last visited Mar. 22, 2008).

118. *Id.*

* Author, China Trademark Section: Paul Jones, Jones & Co., Toronto.

ances and Phonograms Treaty of 1996.¹¹⁹ But in April 2007 the United States initiated dispute settlement proceedings over deficiencies in China's protection and enforcement of copyright and trademark rights, based on four grounds.¹²⁰ First, it cited low thresholds for criminal liability, notwithstanding a Supreme People's Court Interpretation¹²¹ that reduced the criminal threshold for copying from 1000 to 500 copies. Second, China's Customs Regulations allow for the resale of de-identified counterfeit products back into the marketplace. Third, China denies copyright protection to works awaiting approval (censorship review) to enter the Chinese market. And finally, China's Criminal Law requires that an infringing producer engage in distribution—not merely copying—before there is criminal liability. Article 2 of the Supreme People's Court Interpretation, however, seemingly addressed this issue by explaining that “and” means “and/or.”

Copyright infringement cases continue to be commonly brought in China's courts. Usually they are brought by Chinese parties and often involve entertainment content or software. In one series of cases, seven motion picture studios sued Shanghai Yueying Yinxiang Zhipin Limited.¹²² The defendant did not appear and the total damages awarded were RMB 185,000.¹²³

The International Federation of the Phonographic Industry (IFPI) brought a successful action against Yahoo! China in Beijing's No. 2 Intermediate Court and obtained an order requiring Yahoo! China to delete links to websites offering free music downloads.¹²⁴

119. Intellectual Property Protection in China, China Joins WIPO Internet Treaties (July 1, 2007), http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=100913&co_no=934&dir=200707.

120. Press Release, Office Of The USTR, United States Files WTO Cases Against China Over Deficiencies in China's Intellectual Property Rights Laws and Market Access Barriers to Copyright-Based Industries, Apr. 9, 2007, available at http://www.ustr.gov/Document_Library/Press_Releases/2007/April/United_States_Files_WTO_Cases_Against_China_Over_Deficiencies_in_Chinas_Intellectual_Property_Rights_Laws_Market_Access_Barr.html. For a discussion of the components of the case see Stan Abrams, *US WTO IP Case Against China—Part I*, CHINA HEARSAY, Apr. 10, 2007 and the subsequent posts on Apr. 11, 2007, <http://www.chinahearsay.com/?p=155>.

121. *Zuigao Renmin Fayuan Zuigao Renmin Jianchayuan Guanyu Banli Qingfan Zhishi Chanquan Xingshi Anjian Juti Yingyong Falü Ruogan Wenti de Jieshi (Er) 2007 6 Hao* (Supreme People's Court and Supreme People's Procuratorate Regarding Several Issues of concrete Application of the Law in Handling Criminal Cases of Infringing Intellectual Property (Second), Apr. 4, 2007).

122. See, e.g., *Pailameng Dianying Gongsi (Paramount Pictures Corp. v. Shanghai Yueying Yinxiang Zhipin Youxian Gongsi,)*, *Hu Yi Zhong Min Wu (Zhi) Chu Di 29 Hao* (File No. 29), (Shanghai Shi Diyi Zhongji Renmin Fayuan (Shanghai City No. Intermediate People's Court), June 20, 2007). The cases were all decided the same day.

123. *Id.*

124. *Chinese Court Orders Yahoo China to Curb Music Links*, REUTERS, Apr. 24, 2007, available at <http://www.reuters.com/article/technologyNews/idUST11751420070424>.