

KLUWER LAW INTERNATIONAL

Spares, Repairs and Intellectual Property Rights

Editors: Christopher Heath and Anselm Kamperman Sanders



INSTITUTE OF EUROPEAN STUDIES OF MACAU
澳門歐洲研究學會
INSTITUTO DE ESTUDOS EUROPEUS DE MACAU



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IEEM International Intellectual Property Programmes

Christopher Heath and Anselm Kamperman Sanders (eds.)



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Spares, Repairs and Intellectual Property Rights

IEEM and International Intellectual Property Law

The involvement of the Institute of European Studies of Macau (IEEM) in matters of intellectual property is based on annual conferences that take up topical issues of intellectual property from a comparative perspective with a particular focus on Asia and Europe. The first of these conferences was held back in 2000, and has meanwhile become an annual event complemented by an Intellectual Property School and IP Master Classes. All three venues serve as a platform for academic teaching and discussion on intellectual property awareness and the proper place and function of intellectual property law in the context of society and public interest.

From the very start, the intellectual property conferences, the IP Law School and the Master Classes have enjoyed the support, assistance and commitment of Mr Gonalo Cabral, who is an advisor to the Government of Macau, of Ms. Maria do C  u Esteves, past president of the IEEM, and the IEEM's current president Dr Jos   Lu  s de Sales Marques. The latter was also instrumental in setting up an IEEM chair for intellectual property law at the University of Maastricht, currently held by Anselm Kamperman Sanders, thereby further contributing to IEEM's academic commitment to the field of intellectual property law.

The conference papers, as revised and updated, are edited by Christopher Heath and Anselm Kamperman Sanders as an IEEM Intellectual Property Series the volumes of which are listed at the end of this book.

Abstract

Intellectual Property rights have obtained an unprecedented significance in devising business strategies of enterprises. Scope and exercise of such rights often conflicts with the interests of consumers and society at large. While on the one hand refill, recycle, and replacement of spare parts have become an ecological and economic necessity, this may run counter to attempts of manufacturers to monopolize the spare parts market or prohibit a recycle outright by the use of intellectual property rights. This book sheds light on the different interests involved, the different intellectual property rights that are used, and the competition issues to be considered in this respect.

Preface

The editors hereby present papers of the Seventh Intellectual Property Conference organized by the Macau Institute of European Studies (IEEM) on intellectual property (IP) law and the economic challenges for Asia.

The objective of the conferences is to provide up-to-date information on developments in global intellectual property law and policy and their impact on regional economic and cultural development. The conference on Spares, Repairs, and Intellectual Property Rights, whose papers are presented in this volume in updated form, took a holistic approach on the attempts of manufacturers to prevent the refill/recycle or exchange of spare parts as part of a business strategy that allows a competitive advantage at the market stage of selling the main product – and a subsequent recuperation of costs – by monopolising the market for spares, repairs and refills. While the first two chapters analyse the issue against the conflicting interests of manufacturers, consumers, spare parts makers, and the general public, the following Chapters three to seven answer the question to what extent such a business strategy can be more or less successful with respect to the different rights involved, and in different jurisdictions. The last chapter deals with the competition issues of the business strategy. The book thereby tries to answer two related questions: to what extent is it *desirable* to use intellectual property rights and contract in order to shift competition from the stage of the main product to the spare parts market; and to what extent can and does such a strategy work in markets such as Europe, the US, and, to some extent, China and Japan.

The success of the past IEEM intellectual property law seminars has turned the venue into an annual event that since the year 2005 has been coupled with the IP Law School and the IP Law Master Classes. The IP Law School is a unique initiative in Asia offering a taught programme in international intellectual property law and its relevance for Asian, European, and global economic development and

innovation policy. The master classes are much more topical and are taught jointly by the regular IP Law School team and expert speakers at the IP Seminar. The IP Law School and Master Classes form a seamless companion programme to the Annual Intellectual Property Seminar. The eighth conference in 2007, whose proceedings are forthcoming, analysed the issues of intellectual property and the pharmaceutical industry, while the ninth conference in 2008 looked at the tension between territorial IP rights and international trade. The tenth conference in 2009 highlights a number of landmark IP cases from various jurisdictions, and traces how these cases have shaped the international IP system today and how they may still affect future discussion and policy.

The editors would specifically like to thank Mr Gonçalo Cabral, who has been instrumental in organising both the IEEM annual seminars and the intellectual property summer school, and José Luís de Sales Marques, President of the IEEM, for his continuing support for both venues. Moreover, the seminars would not have happened without the tireless commitment of Bentham Fong, Beatrice Lam, and the other staff members of IEEM in Macao. Last but not least, the editors would like to thank Christine Robben of Kluwer Law International for having agreed to publish the proceedings of this and future conferences in a series on international intellectual property law.

Christopher Heath and Anselm Kamperman Sanders

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