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INTELLECTUAL PROPERTY ATTORNEYS

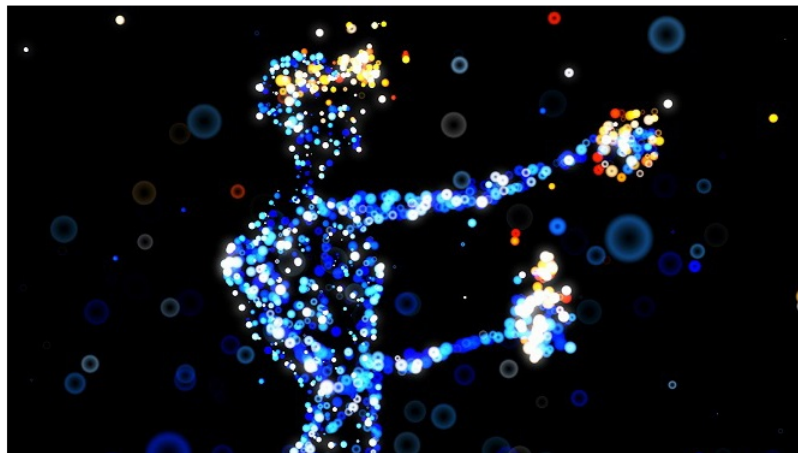


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News May 2022

Metaverse: Trademarks on the Internet 3.0

If there is one topic that everyone is talking about, it is the metaverse. This term, which seems futuristic, appeared 30 years ago in the science fiction novel *Snow Crash* (1992), where Neal Stephenson describes a type of collective virtual space, compatible with physical reality, which he calls the metaverse ("beyond the universe").



To define it clearly, one must understand the evolution of the Internet from its beginnings until today and, especially, the role that the user has played within it. At first, the user browsed the Internet to obtain content, without being able to influence it directly. Internet 2.0 was a radical change that allowed users to upload their own content (social networks have undoubtedly played a major role). On the Internet 3.0 world, the content will be the users themselves.

What exactly is the metaverse and why are we talking about it in a publication about trademarks?

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**Defying gravity:
The 3D shape of the “Moon Boot” no longer acts as a
trademark**

Singular 3D shapes applied to products can function as brand identifiers and proof of this is that, regardless of any other mark appearing on the shapes, everybody recognizes the Coca-Cola bottle, the Toblerone chocolate bar or the Duracell battery.



However, 3D shape marks can be challenging to register as shapes are intrinsic to products and thus, the threshold for distinctiveness for a 3D shape mark could be higher than for other marks (although in theory this should not be the case). The 3D shape must differ from other existing shapes for the goods in the market and be recognizable as a unique badge of origin for the goods in the eyes of the relevant public.



The boots marketed under the mark Moon Boot (Tecnica Group SpA) has had a longstanding presence in the economic traffic, being nowadays one of the most popular après-ski boots in the market. Thus, how come such an icon has lost its legal protection as a 3D trademark?

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“Thermomix” vs “Monsieur Cuisine Connect”: The battle of the kitchen robots ends upside down



As many will recall, a year ago, the Commercial Court No. 5 of Barcelona upheld the legal action of Vorwerk & Co. Interholding GmbH ("Vorwerk"), manufacturer of the Thermomix® multi-purpose kitchen appliance, against the supermarket chain Lidl Supermercados, S.A. ("Lidl"), declaring that Lidl's "SilverCrest Monsieur Cousine Connect" (Thermomix® competitor) infringed Vorwerk's patent protecting technology consisting of a "Food processor".

Recently, the case has taken a turn. The Court of Appeals of Barcelona (judgment No. 14/2022 of 13 January 2022) upheld Lidl's appeal, declaring Vorwerk's patent invalid and the infringement non-existent. It thus gave the green light for Lidl to resume marketing its Monsieur Cousine Connect.

As for the invalidity of the patent, which was one of the pillars of Lidl's defence, the Court of Appeals considered that the patent was invalid for two different reasons: illegitimate added subject-matter during its prosecution and lack of inventive step.



SHORT NEWS

EUIPO: An early withdrawal will no longer be a victory

The month of April has brought us a new revision of the EUIPO Examination Guidelines. And, this time, they propose an important change that will affect the strategy behind the withdrawal of certain EU trademark applications.

Which is the proposed change? Decisions refusing EUTM applications on absolute grounds will be published the day after their notification, irrespective of whether the decision is final or not. Thus, the way these decisions are publicised will be harmonized with those of oppositions, cancellations or appeals.

Which are the consequences? Notwithstanding the withdrawal of an EUTM application within the 2-month appeal period, the refusal decision will be published and made available for public consultation. And it will produce effects.

The refusal decision may block the conversion of an EUTM into a national or regional (Benelux) trade mark, where a ground for refusal has excluded protection in a particular Member State.

When will it take effect? With the entry into force of the new EUIPO Guidelines, which has taken place on 31 March 2022. It will therefore affect all decisions issued after this date.

This new proposal is clearly in favour of transparency and public availability of information that, until now, has remained between the Office and the parties. This is likely to change the course of action and strategies of applicants, as the refusal of their trade marks on absolute grounds will be visible and searchable, even if the application is withdrawn. It will also influence the conduct of certain invalidity proceedings on absolute grounds. Because... in whose interest is it that a decision refusing your EUTM application (already withdrawn) is public and effective?

More information on the latest EUIPO Examination Guidelines at the [EUIPO's news portal](#).

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Ukraine: IP deadlines under Martial Law

The Ukrainian Intellectual Property Office (UIPO) is working around the clock to secure the intellectual property rights (IPRs) system in the country.

On 24 February 2022, the Martial Law was introduced which, among other things, establishes a safety framework in case certain deadlines affecting IPRs cannot be respected, considering that circumstances of "force majeure" are present. However, the text of the law raised doubts regarding the time limits involving IP right holders who are not Ukrainian citizens or are not domiciled in Ukraine.

To address these concerns, the Law 2174-IX "On the Protection of IPRs during Martial Law in connection with the military aggression of the Russian Federation against Ukraine" was adopted on 1 April 2022 and entered into force on 13 April.

The said Law clarifies the situation in that it provides:

- The suspension of the time limits for the protection and acquisition of IPRs, trademarks, inventions, utility models, industrial designs, semiconductor topographies, geographical indications, copyrights and plant varieties, during the period of the Martial Law, as of 24 February 2022.

In addition to the general time limits for the processing and maintenance of IPRs provided for in the relevant IP laws, the suspension also affects the time limits for:

- Filing oppositions against applications for national trademarks and international registrations designating Ukraine ;
 - challenging decisions of the UIPO in court ;
 - file appeals before the Board of Appeal of the UIPO ;
 - file patent invalidity actions ;
 - or file applications for reinstatement of unobserved time limits, etc.
- The continued validity of IPRs for which time limits have been suspended.
 - The possibility to pay maintenance fees (renewal and annuity fees), which were due or expire within the period of Martial Law, within 90 days after the lifting of the Martial Law regime, without paying any extension or reinstatement fees.
 - The possibility for IPR holders to take the necessary actions for their protection and defense, i.e. file applications, responses to objections or oppositions, etc., within 90 days after the lifting of the Martial Law regime, without paying any extension or reinstatement fee.

According to the said Law, these time limits shall be counted from the day following the date on which the Martial Law regime ceases or is lifted.

The above provisions do not imply that holders are exempted from the obligation to take all the steps required to secure and protect their IPRs.

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