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Hot Topics

1. COMPUTER IMPLEMENTED INVENTIONS IN EUROPE

JUSTIN HILL, THE AUTHOR OF THIS ARTICLE AND SENIOR DIRECTOR, IP PROCUREMENT EUROPE, IN OUR LONDON OFFICE, WOULD BE PLEASED TO ANSWER QUERIES ON THIS SUBJECT

The Commission's draft directive on patent protection for computer implemented inventions (often called the CII directive) was intended to clarify the current legal situation in Europe and harmonise the approach taken by the national Courts of the Member States and the Boards of Appeal of the European Patent Office. The European-wide consultations which preceded the initial draft also established that many European entities wished to avoid a drift towards the more liberal patenting regime of the US. The draft directive would also make the European Court of Justice the highest authority.

In the EU, law making involves a co-decision procedure according to which the text of the directive cannot become law without the agreement of both the European Parliament and the Council of Ministers. Controversy has reigned since September 2003 when, during the first reading of the draft CII directive, the European Parliament introduced more than 50 amendments pursuant to the demands of various lobby groups, including elements of the open source programming community. The result, according to most commentators, is an unworkable text. The Council of Ministers subsequently rejected most of the Parliament's amendments and, in May 2004, published a further version of the draft directive representing a political agreement between Ministers of the various states.

This review is based on the Council text of May 2004, but will also address some of the key issues of controversy in the Parliament text. Much of the controversy has arisen owing to the fact that the definition of "computer implemented inventions" in the directive is extremely broad. The result is that much of the rather draconian legislation in the directive would be felt by industries far beyond pure software developers. In fact any industry offering a product or service with at least part of its functionality implemented in software would be affected. Therefore the directive would be felt in industry sectors as diverse as consumer electronics, domestic appliances and life sciences (medical device makers etc).

How does Europe currently differ from the US?

The last decade has seen the US broaden its patent granting practice such that inventions which have "a useful, concrete and tangible result" can qualify for protection by patents. While novelty and non-obviousness are required, the US test for patentability does not require a technical contribution to the field in question. Thus, non-technical software and non-technical business methods qualify for protection provided there is novelty and inventive step.

In contrast, the practice in Europe has been to require a technical contribution to the art. At the European Patent Office an invention is considered to make a technical contribution where it is shown that the invention is capable of bringing about a "technical effect which goes beyond the 'normal' physical interactions between the software and the computer on which it is run." Applications have been allowed when the invention is used to control a machine or technical apparatus, or when an invention manipulates digital images or leads to an improvement in performance (or saving of resources) as part of a computer system. On the other hand, business methods implemented by known technical means are not considered patentable, as the mere use of a computer or other programmable apparatus does not necessarily confer a technical contribution. Thus, in Europe,

the use of algorithms is only patentable where the algorithm is reduced to an application in which it makes a contribution in a technical field by means of some programmable apparatus or technical method.

How would the proposed directive limit patent protection for software in Europe?

Regarding substantive principles of patentability, the directive explicitly ties the identification of technical character with the assessment of inventive step. This is because its central proposal requires that to be patentable an invention implemented at least in part though the execution of software on a computer, or similar programmable apparatus, has to make a non-obvious contribution in a technical field. While this raises the bar for patentability, something similar has been the recent practice at the European Patent Office.

The threshold for demonstrating a technical contribution is based on case law and has traditionally been low. Expert advice should be sought to clarify the prospect of success in a particular case, but as a rule it can be assumed that if the only contribution made by software or a programmed apparatus is non-technical, such as performing an act electronically which would otherwise have been performed mentally or in the course of doing business, the prospects of achieving grant are low. Certain technically implemented business methods and the like, based for example on novel data structures, interfaces etc, are expected to qualify for patent protection under the Council text, just as they have done in the past.

Thus, under the draft legislation (and arguably recent case law as well) the assessment of "technical contribution" is tied up with the determination of inventive step, and considered less as a preliminary issue before assessment of novelty and inventive step. In practice, many software implemented inventions would not meet this test because, irrespective of whether or not the claim as a whole is inventive, the contribution may well be rejected as amounting to nothing more than a non-technical step like performing a mental act, a mathematical method, playing a game, a scientific theory, or a program for a computer etc. When considered in isolation this "technical contribution" issue would considerably reduce the scope of protection for computer implemented inventions in Europe. However, when considered alongside the remainder of the proposals in the draft legislation, particularly those in the Parliament's text, the effect is regarded as drastically limiting what would qualify as a patentable computer implemented invention.

Subject matter excluded from patent protection

The Council draft seeks to maintain the status quo in relation to exclusions, but also clarifies what the exclusions mean. It attempts to do this by taking the same general approach as the European Patent Convention, namely it explicitly excludes computer programs (as such), mathematical methods, and business methods. The intention is to prevent these being monopolised in their abstract form. Accordingly, there remains the potential for patentability under the Council text when reduced to an application in which some technical contribution is evident.

On the other hand, and very controversially, the Parliament's text explicitly excludes any invention to do with "the processing, handling, presentation of information", "data processing", and even inventions acknowledged to "improve efficiency / use of resources in a data processing system". These classes of invention have for years been well within the realms of subject matter which might qualify for patent protection. The Parliament text goes even further in that it also undermines many already granted patents by reciting permitted acts including that it is not an infringement to use a patented technique for "conversion of conventions used … to allow communication and exchange of data ….". A combination of the sweeping

exclusions and broad permitted acts would remove many classically protected fields from qualification and render very many granted patents unenforceable. Bearing in mind the broad definition of "CII" as meaning anything which has at least part of its functionality implemented in software, and fact that all patents are in fact directed to protect "useful purposes" the ramifications would go far beyond software and even computing.

In summary, the Parliament text represents a radical departure from the current legal position. Whereas certain elements of the programming community would welcome such a drastic change in the law, mainstream technology companies remain extremely concerned. Their concerns go to the question of whether or not their products will in future benefit from the traditional levels of protection which justified investment in the technology in the first place. This sort of question has immediate ramifications for the choice of exploitation model, for product quality and in the longer term product support, as well as raising questions as to whether future product development initiates are commercially feasible at all.

Would the proposed directive restrict interoperability?
The Software Copyright Directive (already in force as 91/250/EEC) provides that copying and the reproduction or translation of code for the purposes of studying the underlying principles of operation of a program is not an act of infringement. European patent protection is not intended to interfere with these interoperability provisions, either now or under the proposed patent directive. As a result, the proposed patent directive includes a clause which explicitly refers to interoperability provisions under the copyright directive with a statement that nothing in it shall affect or limit these rights. Failure to understand the safety net provided by a combination of the "permitted acts" under patent law and the above interoperability provisions in the draft directive has led to assertions that the proposed patent directive seeks to harm or limit interoperability provisions.

Will claims to software on a carrier be permitted?
Despite concerns that limiting the claim format available to CII's would be contrary to TRIPS, both the Council and Parliament versions of the draft currently seek to do this. Under the Council text a claim to a program on its own (or on a carrier) would only be allowable in an application which also includes claims to a programmed apparatus or to a corresponding technical process.

Based on the Parliament text, such claims would not be available in any circumstances. This would clearly have serious implications in some cross-border infringement scenarios, in which the lack of availability of such claim formats would lead to a lack of jurisdiction and/or no claim to primary infringement.

Where does all this leave business methods?
Pure business methods have never been patentable in Europe other than in computer implemented systems making a genuine technical contribution in a field other than "doing business". No part of the proposed directive deals directly with business methods and therefore nothing to do with the directive would change this position. There remains a general satisfaction in Europe with the position that pure business methods are not entitled to protection under patent law.

Where do we go from here?
Formal adoption of the Council text by the Council was expected early in 2005. Under usual procedure the Council's text would then have been presented to the European Parliament shortly afterwards for a Second Reading. However, in the latest twist a European Parliamentary Committee voted early in February 2005 to ask the European Commission to present a freshly drafted proposal, taking into

account the controversial amendments introduced in Parliament's first reading. This appears to be a response to the intense and emotional lobbying by The Open Source Community and The Green Party, among others, and reflects the serious misconceptions MEPs have on the difference between a US-style position and the regime proposed in the draft directive. In fact, there seems to be little or no understanding of that fact that the position under the Council's version of the proposed directive represents a move away from the current position in Europe in the opposite direction to the US. In other words it seems MEPs have set the proposal back because they feared a more liberal regime (US-style) when in fact the draft represented a more stringent regime (lower level protection for CIIs and software than current).

The Commission is still at liberty to decide what to do. For example rather than starting afresh it may prefer a faster route based on compromise between the existing texts. The largest obstacle remains reaching an agreement between the Parliament and the Council on these controversial provisions. This cannot be overcome with the present level of misconception and scaremongering by the anti-patent lobby groups Without an agreement, the directive could not become law. There is therefore a chance that the legislation will fail or be withdrawn and never enter force. In this case, one possible alternative would be an amendment to the European Patent Convention, which would be made on agreement of the member states of the European Patent Organisation, as distinct from the European Union. Another alternative might be to leave it to case law to provide the clarity which is so desperately needed in Europe.

The recent vote by the European Parliamentary Committee may be an indication of stronger anti-patent feeling, particularly given that European elections have installed a new Parliament since the first reading. Likewise there are new representatives from new Member States following the recent enlargement of the European Union. These new members bring their own views to the Parliament. Poland in particular has publicly backed a shift away from the current Council text towards the controversial Parliament text.

European industry was set to call on the European Council to formally adopt its text so the legislative process could continue. However, now that the proposal has been set back, the Commission should probably withdraw its current proposal to avoid drawing out the legal uncertainty. In this way, the debate could continue without the current political tensions.

2. EU RULES AGAINST MICROSOFT IN ITS BID TO SUSPEND ENFORCEMENT OF WINDOWS MEDIA PLAYER RULING

On 22 December 2004, the European Court of First Instance delivered its judgment in *Microsoft v Commission* Case T-201/04 R.

The European Court of First Instance decided to reject Microsoft's bid to suspend an anti-trust order and upheld the interim measures imposed by the Commission against Microsoft as a result of the abuse of its dominant position in the worldwide market of software for personal computers.

On 24 March 2004, the Commission decided that Microsoft must:

- Offer a European version of Windows operating system without the Media Player utility (a multimedia pack for audio and video); and
- Disclose all the information necessary to establish a dialogue between the Windows system and other competitor's systems.

In addition, the Commission imposed a fine amounting to €497,196,304, which is one of the largest fines ever issued against a company in a competition case.

Microsoft requested a provisional suspension of the obligation to release fundamental information of their software. The President of the European Court of First Instance rejected Microsoft's argument that it would suffer serious and irreparable damage if the EU sanctions took immediate effect. The court concluded that the company had not adduced sufficient evidence to support that such disclosure of information would in effect cause irreparable damage to the financial position, business policy or reputation of the company. The President of the Court did state that Microsoft had the right to submit a technical file to the Commission, in which it could comment on the degree of precision of the specifications and the risks of revealing information necessarily covering more than just the interoperability sought by the Commission. However, Microsoft refrained from doing so.

The Court did leave a margin of possibility for Microsoft to appeal to the European Court of Justice. Nevertheless, the Court's decision supports the Commission's desire for the worldwide market of software for personal computers to be opened up and for Microsoft's rivals to be offered the opportunity to further develop and promote their software products.

Copyright

3. P2P MUSIC COPYRIGHT CASES FROM NORWAY, GERMANY, KOREA & US

Following the Napster ruling, courts around the world are redefining the rules regarding file sharing P2P services and their members. The critical questions relate to service provider liability and whether the service providers have the obligation to disclose the identities of their users.

Several P2P music copyright cases have recently been decided in a number of jurisdictions, notably Norway, Germany, Korea and the United States. However, the various courts have not adopted the same principles.

In Norway, the student who established the napster.no website was ordered by the country's Supreme Court to pay compensation to the Norwegian music industry. The student set up the website as part of a school project. The website was only operational for 2-3 months and, at its peak, it was only providing links to around 170 files. The amount of compensation ordered was 100,000 kroner (£8,000). The Norwegian Music industry considers the case to be very important for the future of the internet as a distribution medium.

In a similar case, in the South Korean Appellate Court, the owners of the website Soribada were acquitted of copyright infringement. The site allowed users to exchange music files and download them to their computer. The court found that though the activities of site users constituted copyright violation, the owners did not themselves commit copyright infringement, and they were held not to be responsible for the copyright violations committed by the users of the site. However, in a different ruling on the same day, the Seoul High Court said Soribada helped site users infringe on copyright and ordered it to shut down its file-sharing software and its three computer servers, upholding another lower court's decision.

In the US and Germany, the courts have rejected the music industry's requests to order Internet service providers to identify their subscribers who are suspected of illegally offering downloads of music files on the internet. The German courts have taken the view that service providers are only providing technical access to internet

and have no obligation to supervise the content, and, if they have actual knowledge of an infringement, they are only obliged to block access to the infringing material. Similarly, in the US courts, the Court of Appeals for the Eighth Circuit refused to widen application of the provision of the Digital Millennium Copyright Act concerning infringing materials stored on Internet Service Providers' servers. A wider application would enable anyone claiming to be a copyright holder to file subpoenas to find out the identity and home address of any Internet user.

There has been no final word about regulating music file-sharing services. There is much pressure from various parties to make some further changes to copyright laws in respect of P2P services. It may be observed that businesses that are infringing copyright and other laws may find more favourable jurisdictions to place their servers.

4. COPYRIGHT LEVY TO BE APPLIED TO ALL NEW GERMAN COMPUTERS

The District Court of Munich has ordered that Germany's largest computer manufacturer, Fujitsu Siemens, must pay a levy of 12 euros for every new computer sold in Germany. The decision follows an action brought by the VG Wort rights society, which was seeking the levy in order to compensate rights holders for loss of royalties caused by private copying of music, images and films by PC.

This decision makes Germany, which already imposes a levy on analogue copying devices such as blank video and audio cassettes, the first European country to impose a copyright levy on PCs. VG Wort plans to apply the decision to all German PC vendors. However, Fujitsu Siemens has said that it is considering appealing against the decision and is also petitioning the German government (which is currently debating the country's copyright law) to review the role of VG Wort in the new digital environment.

It should be noted that this levy is not a licence to infringe – private users will still be infringing copyright if they use their PCs to make illicit reproductions.

5. SPAIN, PORTUGAL AND IRELAND BEFORE THE EUROPEAN COURT OF JUSTICE OVER THE PUBLIC LENDING RIGHT

In December 2004, the European Commission decided to refer Spain, Ireland and Portugal to the ECJ for their failure to properly implement Council Directive 92/100/EEC (on rental rights, lending rights and certain rights related to copyright in the field of intellectual property).

The Directive aims to balance the Internal Market with the needs of Member States to promote their own cultural objectives (see IP/02/1302). Failure to properly implement the Directive is liable to cause discriminatory protection of the authors' works within the European Union.

Articles 1 and 2 of the Directive grant rights holders exclusive rental and public lending rights. Article 5 introduces the remuneration right and grants the Member States the flexibility to determine the level of remuneration to be paid for the public lending right. It also allows them to exempt some categories of lending institutions from both the exclusive lending right and remuneration right. The Commission found that Spain, Ireland and Portugal had not applied Article 5 of the Directive and had exempted all public lending institutions from paying any remuneration for public lending.

In a similar case (C-433/02), the ECJ ruled against Belgium who, as a result, implemented the 1994 law on the public lending right. France implemented the public lending right when it was referred to the ECJ. Italy and Luxembourg have also been spared for the moment as they take measures to align their national laws with the Directive. Sweden and Finland have also received notices from the Commission as they have applied the provisions selectively (the right of remuneration is only applied to works written in Swedish and Finnish respectively). Portugal has also failed to properly implement the rental right by including a new category of right holders to the exhaustive list provided by Article 2 of the Directive.

The action by the Commission is important as it emphasises the need to harmonise the laws in the field of copyright and related rights, especially with regard to public lending and rental rights. With the ECJ decision against Belgium, the pending cases against Spain, Portugal and Ireland, and the formal notices against Sweden and Finland, the Member States who have not fully or properly implemented the Directive will be next in the Commission's firing line.

Patents

6. GERMAN COURT SHAVES OFF GILLETTE FOR ENERGIZER

Energizer has scored a recent victory in its bitter fight against Gillette relating to its shaving blade patent in Germany.

When Energizer bought the Schick-Wilkinson Sword shaving business and, in 2003, marketed "Quattro" (a four blade shaving razor) in the US and Europe, it met a fierce resistance and opposition from Gillette. Gillette maintained that the razor infringed its patented "progressive blade geometry" technology used in the Mach3 blades. Gillette launched various lawsuits against Energizer in an attempt to protect its intellectual property. The lawsuits across Europe and US asked for unspecified damages and for a court order to prohibit Energizer from launching its product in the market.

In January 2004, a court of Massachusetts had ruled that there was no reasonable likelihood that Gillette would succeed on one of its key claims and hence refused to halt sales of Quattro. The present German ruling which found that Quattro does not infringe the Gillette patent comes as the second victory for Energizer within a year.

The German ruling is a vindication for Energizer, who has steadfastly maintained that its product is unlike any other razor, including that of Gillette. However, it is clear from the statements of company representatives and the lawsuits still pending in US that the conflict is far from over.

7. GOOGLE TRADE MARK BATTLES

The Nanterre court in France has ruled that Google must not use the trade marks of Le Meridien Hotels and Resort to trigger keyword advertisements. The court found that Google infringed Le Meridien's trade mark by allowing the hotel chain's rivals to bid on the keywords of its name which, in turn, causes the competitor's name to figure prominently in related search results. This is not the first time that Google has lost in France. They also were successfully sued by Louis Vuitton.

This decision strikes a blow to Google's financial prospects in Europe. Almost all of Google's revenue is earned from keyword advertising linked to search technology. This technique is so effective because the Web is one of the primary ways people search for products and services.

A similar case brought by Geico Insurance Company in the US was unsuccessful. The Judge ruled that that as a matter of law it is not trade mark infringement to use trade marks as keywords to trigger advertising.

Google believes that this case indicates a change in the legal landscape and is thus changing its trade mark policy. Google is replying on the long-held tenet of trade mark law that provides that there can be no infringement of a registered mark unless there is a likelihood of consumer confusion. According to the company, internet users are not likely to be confused by the clearly labelled text ads that appear on Google.

This change to Google's trade mark policy underscores the ongoing legal uncertainties raised by keyword advertising programs offered by search engines. The move also signals Google's increasingly aggressive stance in defending its primary source of revenue. Some see this almost a declaration of war on trade mark owners, or at the very least, an invitation to more lawsuits.

Trade Marks

8. OPINION OF ADVOCATE GENERAL IN NESTLE V MARS UK

On 27 Jan 2005, the Advocate General (AG) of the European Court of Justice gave his opinion on the acquisition of distinctive character through use of a sequence of words as part of a word mark, in this case "HAVE A BREAK" as part of "HAVE A BREAK ...HAVE A KIT KAT" (see Nestlé v Mars UK Case C-353/03).

The issue in dispute is whether the word sequence "HAVE A BREAK" from "HAVE A BREAK ...HAVE A KIT KAT" is inherently distinctive or has acquired distinctiveness through use for trade mark purposes.

The Hearing Officer from the United Kingdom Patent Office and the Court at first-instance refused registration of the trade mark based on the fact that "HAVE A BREAK" was not inherently distinctive and had not acquired the requisite distinctive character by virtue of the use of "HAVE A BREAK … HAVE A KIT KAT". On appeal, the Court of Appeal established that the relevant consumers construed the word sequence "HAVE A BREAK" as a neutral invitation in regard to origin and therefore devoid of inherent distinctiveness. However, the Court did not rule out the possibility that part of trade mark could also acquire its own distinctiveness.

Pursuant to Article 3(1)(b) of First Council Directive 89/104/EEC, trade marks which are devoid of any distinctive character shall not be registered. However, the first sentence of Article 3(3) provides an exception to that ground of refusal: A trade mark shall not be refused registration or be declared invalid in accordance with paragraph 1(b), (c) or (d) if, before the date of application for registration and following the use which has been made of it, it has acquired a distinctive character'.

Mars, opposing Nestlé's application, rejected an evaluation of the evidence relating to use of the principal mark and said validity should be accorded only to use of the wording for which the trade mark application was made independent of the "KIT KAT" mark. Mars argued that use as an element of another trade mark may not be invoked as evidence of distinctive character for the purposes of Article 3(3). However, this interpretation was not accepted. The AG decided that since use of a mark literally means both its independent use and its use as part of another composite mark, any use which conferred on a sign the distinctive character necessary for registration as a mark must be deemed to be use of a mark as a trade mark and meets the requirements of Article 3(3).

The UK Government and Mars fear the extension of derivative trade mark protection. However, a secondary derivative mark will not be able to acquire distinctive character on the basis of its connection with the primary derivative mark if a derivative mark possesses no sufficient distinctive character of its own but acquires distinctiveness only by way of the connection with the principal mark.

As past cases have shown, the acquisition of distinctive character is essential where the element in question relates to the mark as a whole. However, the Opinion agrees with the UK Government in assessing the view of consumers. Trade marks will not able to be registered if consumers merely wonder about the origin of the product and even when consumers could naturally connect "HAVE A BREAK" with "HAVE A KIT KAT".

What is required, according to the Opinion, is a strict interpretation of the distinctiveness of a derivative mark which is based on a clear understanding of the origin of goods by consumers.

9. BONGRAIN TRADE MARK APPLICATION

On 17 December 2004, the English Court of Appeal upheld the decisions of the Registrar of Trade Marks and Mr Justice Pumfrey, who had both refused the registration of a series of two and three-dimensional marks for the shape of a cheese. Protection was sought whatever the colour of the cheese or its rind or wrapping and irrespective of any label, which in real life would almost certainly be attached to the cheese at least at the point of sale.

Bongrain argued that the shape, especially if confined to cheese, was strikingly unusual and that was enough to give it a “distinctive character” entitling it to registration without anything else. In other words, the significant departure from the norm was enough to confer distinctive character. To support this, he submitted that the Court of First Instance decisions in *Nestle Waters* and *Henkel v OHIM* demonstrated the correct approach. In both cases, the highly unusual shape of the bottle was enough to pass the Article 3(1)(b) of First Council Directive 89/104/EEC test without any proof of distinctiveness in fact.

As a subsidiary argument, Bongrain submitted that the public interest in the preservation of certain signs in the interests of healthy competition did not apply here and that such an interest was essentially limited to colour marks.

On the main point, it was held that a very fancy shape is not necessarily enough to confer an inherently distinctive character. The fact that a shape is unusual for the kind of goods concerned does not mean that the public will automatically take it as denoting trade origin or as being the badge of the maker. Therefore, the fact that the shape of a good is fancy is not enough to entitle a would-be trader in them the registration as a trade mark. It was found that there are real differences between creating a fancy shape to sell as such, and a fancy shape which truly in itself will denote trade origin.

In relation to the public interest submission, it was held that the “depletion” public interest was not confined to colour marks, nor was it an independent ground of objection.

It is interesting to note that although permission to appeal in this case was granted as long ago as 1 May 2003, this appeal was delayed whilst a number of cases giving guidance on the question of registration of three-dimensional marks were

decided by the European Court of Justice.

10. EL CORTE INGLES V OHIM (EMILIO PUCCI)

On 13 December 2004, The European Court of First Instance produced its decision in *El Corte Inglés v Office for Harmonisation in the Internal Market (OHIM) – Pucci* (Case T-8/03).

In 1996, the Italian company "Emilio Pucci" submitted an application for Community Trade Mark (CTM) in respect to goods in classes 3, 18, 24 and 24. In April 1998, the application was approved and in July of the same year El Corte Inglés filed a notice of opposition, on the ground of risk of confusion in respect to its "Emidio Tucci" Spanish trade marks. "Emidio Tucci" was already registered for classes 3 and 25 and OHIM allowed their opposition and did not register the "Emilio Pucci" marks in those classes. However the OHIM did register Emilio Pucci under class 24 and for certain products in class 18. Both El Corte Inglés and Emilio Pucci lodged appeals against the OHIM decision. In the second instance, OHIM annulled the previous opposition under class 18, while the rest of the decision was confirmed.

The principal claim before the Court was in respect of the importance of 'complementary character' between the products of the different classes. If accepted, this character would grant a wider protection to the right holder. The Court reiterated that the likelihood of confusion must be assessed comprehensively and, in particular, should consider the following relevant factors: nature, end users, method of use, and whether the trade marks are in competition with each other or are complementary. The Court did not find that such elements presented enough similarities among the categories considered. Essentially the use of one was not indispensable for the use of the other.

The second claim raised concerned the arguably superior reputation of Emidio Tucci trade marks within the relevant territory. The Court held that higher than normal distinctiveness is to be proven by objective criteria such as market share, intensity, geographical extent and duration of trade mark use, together with the amount of promotional investment. The material brought by the claimant was held to be insufficient proof and the second claim was also dismissed.

The judgement on both claims followed the relevant jurisprudence, explicitly set out in earlier cases (C-251/95 and C-39/97).

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