

IP in Review

'A book may be good for nothing; or there may be only one thing in it worth knowing; are we to read it all through?' (Samuel Johnson)

This section is dedicated to the review of ideas, articles, books, films and other media. It will include replies (and rejoinders) to articles, the evaluation of new ideas or proposals, and reviews of books and articles both directly and indirectly related to intellectual property law.

That's the way to do it!

Christopher Stothers*

A Practical Guide to Mediation in Intellectual Property, Technology and Related Disputes (EIPR Practice Series, Book 2 2006)

Jon Lang
Sweet & Maxwell, 2006
ISBN: 0421938609, Soft cover, pp. xiv+115
£85.00

*Mr Punch is one jolly good fellow,
His dress is all scarlet and yellow,
And if now and then he gets mellow,
It's only among his good friends.
His money most freely he spends;
To laugh and grow fat he intends,
With the girls he's a rogue and a rover,
He lives, while he can, upon clover;
When he dies – it's only all over;
And there Punch's comedy ends.*

From *The Tragical Comedy, or Comical Tragedy, of Punch and Judy*, as told to John Payne Collier by Giovanni Piccini in 1827.

The traditional puppet show, known in Britain as 'Punch and Judy', where everyone is after the sausages and Mr Punch lets his stick do the talking, is not a million miles away from the archetypal IP or technology dispute (although for reasons of personal safety this reviewer will refrain from developing the analogy further).

So in our Punch and Judy show, who would be the mediator? The policeman? The crocodile? Punch or Judy themselves? As portrayed by Jon Lang, it seems clear that the mediator is in fact the Professor (the puppeteer), who leaves it to the parties (and their representatives) to accuse each other of being 'stick-up merchants' and to seek to 'salami slice' the sausages, all the while manoeuvr-

ing the recalcitrant puppets towards the happy-ever-after settlement (with as little use of the stick as possible).

Our Professor's guide provides a readable and concise introduction to the world of mediation for those involved in IP and technology disputes. It assumes a basic level of understanding of such disputes and is thus clearly a book on mediation targeted at that market rather than a book on IP and technology aimed at mediators.

The first three chapters provide an overview of mediation in its legal context, both in the UK and further afield. The remainder of the book provides a not-quite-chronological overview of the mediation process, from appointment of a mediator and preparation for the mediation, through advocacy and the mediation itself all the way to settlement. The book finishes with five case studies, which are also referred to liberally in the main text.

Throughout the book, the author takes a very convivial, colloquial style, illustrating his points with stories from the battlefield. He does not seek to dazzle his readers with science, citing only nine cases together with the English Civil Procedure Rules and the European Convention on Human Rights. Nor does he seek to delve into theoretical analysis of mediation, leaving the dubious charms of BATNAs, WATNAs, and ZOPAs to 'the more formal teachings'.

The self-proclaimed goal of this book is to be practical and there can be no doubt that this has been more than achieved. It would make useful reading for legal practitioners involved in mediations who, while perhaps disagreeing with the author on certain topics, are bound to come across one or two ideas which might make them stop and think. It would also, rather radically for a 'law' book, provide sensible reading material for those on the business side who want a basic insight into the purpose of a mediation and the strategies they can adopt.

There is little to criticize in this book. At times, the proofing could have used a little more care, but this adds to the practical, 'rough and ready' feel rather than particularly distracting the reader. There are few 'checklists' of points to consider, but in a book of this length these are

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scarcely necessary. The author has produced an effective and efficient introduction to mediation, explaining how not to do it and, for Mr Punch's benefit, the way to do it.

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The cornerstones of plant variety protection in India

Gert Würtenberger*

Law of Plant Varieties Protection

Elizabeth Verkey

Eastern Book Company, 2007

ISBN: 978-81-7012-962-1, Hard cover, pp. 385

£450.00

Traditionally, India—with a high proportion of small farmers—has been cautious in granting IP rights in food and living matter. As India is one of the fastest developing countries, both in terms of industry and in its population, the plant breeding and farming industry in India may be expected to play an important role in coping with these problems, as the government has realized. For this reason and in order to comply with its obligations under Article 27 of the TRIPs Agreement, in 2001 India passed the Plant Varieties Protection and Farmers' Rights Act (PVP Act).

The constraint arising out of a market situation which is determined mainly by traditional rights of farmers, by the size of the farms and the dependency of a significant section of the available rural area, requires a system which protects the interests of the industry—which invests considerable money and time in the development and improvement of plant varieties—and the interests of farmers in being able to produce food for a rapidly increasing population, without any impeding restrictions. Moreover, an effective plant variety system must take into account public interest in that the individual rights granted would not negatively influence biological diversity to the detriment of indigenous people and their communities. This is because biological resources and other raw materials for the various needs of human beings, as well as the exploitation of the natural genetics resources, will alter the ecosystem. These objectives, which must be balanced in laws granting protection rights in relation to living material, become clear from the Preamble of the PVP Act, which speaks of the necessity

... to recognise and protect the rights of farmers in respect of the contribution made at any time in conserving, improving and making available plant genetic resources for the development of new plants ...

while it is necessary

... to protect plant breeder's rights to stimulate investment for research and development, both in the public and private sectors, for the development of new plant varieties.

Ms Verkey's book, *Law of Plant Varieties Protection*, discusses the essential features of the new protection systems for plant development in India. As plant variety protection is only now provided by the new Act, the book both explains the cornerstones of plant variety protection in India and covers the protection systems available in Europe and the USA. Moreover, it provides a review with respect to the international legal framework.

Following an introductory chapter which emphasizes the need for an effective IP protection system in relation to plant material, the second chapter is devoted to the description of the protection system in Europe which is divided into three parts: the European Patent Convention, the Plant Variety Protection Certificates, and the Biotech Directive, which should ensure that national rights granted in relation to inventions or improvements with regard to plant material on a national level are roughly the same throughout the Member States of the European Union. A major section of this chapter is devoted to the definition of the term 'plant variety', as in the European Union patent protection is excluded for a plant variety as such. Thus, being a term of utmost importance in this section of the book, essential decisions of the European Patent Office, including the decision of the Enlarged Board of Appeal in *Novartis II/Transgenic Plant*, are discussed in detail. As regards the information pertaining to the Directive on the legal protection of biological inventions, a brief explanation concerning the legal construction of a legal instrument 'directive' is given. In this context, the author discusses the Netherlands' action against the Biotech Directive before the European Court of Justice, claiming that the Directive breaches fundamental human rights and violates Community and international law. Moreover, the further description of the

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