Introduction

INCOMING TIDE

In 1974 Lord Denning MR, in one of his opinions on the consequences of the Treaty of Rome for the United Kingdom, wrote: “The Treaty is like an incoming tide. It flows into the estuaries and up the rivers. It cannot be held back. Parliament has decreed that the Treaty is henceforward to be part of our law. It is equal in force to any statute." Four years later, the tide was high and Lord Denning wrote in another decision “the flowing tide of Community law is coming in fast. It has not stopped at the high-water mark. It has broken the dykes and the banks. It has submerged the surrounding land. So much so that we have to learn to become amphibious if we wish to keep our heads above water.”

Of course it is not only the Treaty that flows into the estuaries, but it is also a series of European Directives and Regulations that submerge the surrounding land of the Member States of the European Union. The increasing number of rules adopted by the various European institutions raise questions that, in the first instance, have to be resolved by national judges, such as Lord Denning. However, in view of the need to respect the purposes and goals set by the European legislators, national courts regularly use the opportunity of referring questions to the European Court of Justice for a preliminary ruling.

As in other fields of the law, in recent years many essential issues relating to Intellectual Property law have been resolved by important or even “landmark” decisions with respect to copyright, trade marks and design rights. This book contains over forty of the more important decisions relating to IP law as ruled upon by the European Court of Justice in recent years. Those decisions flow up the rivers of each of the 28 Member States.

As each decision gives the answers to specific questions related to a dispute before a national court in a particular Member State, we have, as much as possible, looked for authors who are familiar with the relevant national jurisdiction to summarise and analyse the decisions. Such authors know their legal system and are best placed to explain the history of the national case, as they can read the original language in which the dispute has arisen. They act in this book as national river pilots and guide the reader along the estuaries and rivers of their Member States to the source of the disputes upon which the European Court of Justice has ruled.

1 H.P. Bulmer Ltd. and Another v J. Bollinger S.A. and Others [1974] Ch. 401 at 419.
2 Shields v E. Coomes (Holdings) Ltd. [1978] 1 WLR 1408 at 1416.
Harmonisation of IP law and the creation of the biggest single market in the world has brought both opportunities and threats. A field in which harmonisation of IP law is pre-eminent is customs surveillance on counterfeiting. The EU has put a system in place which provides IP owners with a powerful instrument to fight counterfeiting side by side with customs authorities.

In 2008 the CAPIP member firms understood the opportunities and created a unique coalition of 24 law firms with offices in 35 European jurisdictions. Due to the CAPIP members’ profound legal skills and experience in working with customs, CAPIP\(^3\) has become a leader in fighting counterfeiting in Europe.

This cooperation ‘in practice’ and the shared interest in the further harmonisation of IP laws has led to this book, the first of a series, providing inside views from various Member States on the most important IP decisions of the European Court of Justice in recent years.

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\(^3\) www.capip.eu

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