Contents

Pre	eface			xii			
		cases		xiii			
Tal	ble of	legislati	ion	xxxvi			
Tal	ble of	treaties	and international agreements	xlv			
1.	Intro	oduction		1			
2.	Copyright and related rights						
		2.1 Introduction					
	2.2	International conventions					
	2.2		Early bilateral agreements	8			
			The Berne Convention	9			
			The Universal Copyright Convention	12			
			The Rome Convention	13			
			TRIPS	15			
			The WIPO Internet Treaties	17			
			The Beijing Treaty on Audiovisual Performances	20			
		2.2.8	The Marrakesh Treaty to Facilitate Access to Published				
			Works for Persons Who Are Blind, Visually Impaired,				
			or Otherwise Print Disabled	22			
	2.3	The influence of the European Union					
		2.3.1	An early survey: the Commission's 1988 Green Paper	24			
		2.3.2	The Software Directive	27			
		2.3.3	The Rental Directive	33			
		2.3.4	The Satellite and Cable Directive	39			
		2.3.5	The Term Directive	43			
		2.3.6	The Database Directive	47			
		2.3.7	The E-Commerce Directive	57			
		2.3.8	The Information Society Directive	61			
		2.3.9	The Resale Right Directive	87			
		2.3.10	The Orphan Works Directive	92			
			The Collective Rights Management Directive	93			
		2.3.12	Future Reforms	97			
3.	Patents and related rights						
	3.1						
	3.2	The gl	obal patent environment	106			
		3.2.1	The Paris Convention	106			
		3.2.2	The Patent Cooperation Treaty	107			
		3.2.3		109			

viii EU intellectual property law and policy

		3.2.4	The Co	nvention on Biological Diversity	118
		3.2.5	The Pat	ent Law Treaty	123
	3.3	The E	European 1	Patent Environment	127
		3.3.1	The Eur	ropean Patent Convention	127
			3.3.1.1	History	127
			3.3.1.2	EPC 2000 - major changes	128
			3.3.1.3	EPC – overview and procedure	130
			3.3.1.4	Opposition proceedings	135
			3.3.1.5	Substantive harmonisation – limits and definitional	
				challenges	136
			3.3.1.6	Article 69 – interpretation of claims	137
			3.3.1.7	European patent – substantive requirements	139
				(1) Novelty – Article 54	139
				(2) Inventive step – Article 56	146
				(3) Industrial application – Article 57	150
				(4) Excluded subject matter and exceptions to	
				patentability – Article 52(2) – Article 53	151
				(i) The boundary between discoveries and	
				inventions	154
				(ii) Computer programs and	
				computer-related inventions; business	
				methods	157
				(iii) Biological subject matter – Article 53(b)	165
				(iv) Methods for treatment of the human or	
				animal body – Article 53(c)	172
				(v) Morality – Article 53(a)	175
				(5) Sufficiency of disclosure	183
		3.3.2	Other le	gislative initiatives in European patent law:	
			the Lone	don Agreement and the EPLA	184
			3.3.2.1	The London Agreement	184
7			3.3.2.2	The European Patent Litigation Agreement (EPLA)	185
		3.3.3		nity initiatives in the field of patent law	186
			3.3.3.1	The Community patent: context and history	186
			3.3.3.2	The unitary patent	189
			3.3.3.3	Supplementary protection certificates	193
			3.3.3.4	The Biotechnology Directive: the legal protection	
			2225	of biotechnological inventions	200
	2.4	DI	3.3.3.5	Utility models	207
	3.4		variety rig		208
		3.4.1		of protection	208
				OV Convention	209
		3.4.3	The Cor	nmunity plant variety right	211
1.	Desi	gns			217
	4.1	_	uction – t	he concept of design	217
	4.2			rds EU harmonisation	218
			-		

						Co	ntents	1X
	4.3	Regist	tered	Comr	nunity	Design		221
	4.4	_	Registered Community Design The Community definition of 'design'					
	4.5	Grounds of invalidity						226 232
	110					s for invalidity		232
					_	s for invalidity		242
	4.6				rietor's			246
	7.0				titlemen			246
						licences		247
		4.6.3		_	and and	neences		247
				****	nforrad	by the design right		248
						by the design right		
	4.7			_		defences		251
	4.7	Jurisa	iction	and	parallel	proceedings		257
5.	Trac	le mark	s and	relate	ed right	ts.	2	259
		Introd					2	259
	5.2	Treatic	es ad	minist	ered by	WIPO	1	262
		5.2.1	The	Paris	Conve	ntion	2	262
		5.2.2	The	Mada	rid Agre	eement	2	263
		5.2.3	The	Mada	rid Prot	ocol	2	265
		5.2.4	The	Trade	emark I	Law Treaty	2	266
		5.2.5	The	Singa	apore T	reaty on the Law of Trademarks	2	266
	5.3	5.3 TRIPS						
	5.4	Community Trade Mark Legislation						268
		5.4.1	Ove	rview			2	268
		5.4.2	App	olying	for a C	Community trade mark	2	269
		5.4.3	Crit	eria fo	or regis	tration	2	273
			(a)	Wha	it is a r	egistrable mark?	2	273
			(b)	The		te grounds for refusal		281
				(1)	Signs	which do not conform to the requirements		
						rade mark		282
				(2)		id of any distinctive character'		282
				(3)		iptive marks		291
				(4)		mary and generic marks		296
				(5)		red distinctiveness		297
				(6)		hape exclusions		300
				(7)		emaining absolute grounds for refusal		308
						Public policy and morality		308
						Deceptive marks		310
						Special emblems and marks prohibited by		211
						law		311
			(\	D 1	. /	Bad faith		312
			(c)			bunds for refusal		312
				(1)		trade marks		313
						Identical trade marks and identical goods		313
						Confusingly similar marks and goods		315
					(iii)	Marks with a reputation	3	327

x EU intellectual property law and policy

			(2) Earlier rights (business identifiers)	339		
		5.4.4	Cancellation of a mark	342		
			5.4.4.1 Invalidity	342		
			5.4.4.2 Revocation	346		
		5.4.5	Infringement	353		
		5.4.6	Defences	362		
		5.4.7	Other EU harmonisation initiatives relevant to trade marks	367		
			(a) Misleading and comparative advertising	367		
			(b) Unfair Commercial Practices Directive	371		
			(c) Domain names	372		
		5.4.8	Community trade marks as objects of property	374		
		5.4.9	Future reforms	375		
	5.5	Geogr	raphical indications of origin	377		
		5.5.1	Introduction	377		
		5.5.2	International treaties	377		
		5.5.3	TRIPS	379		
		5.5.4	The EU regime	381		
			(1) Geographical indications and designations of origin	383		
			(2) Traditional specialities guaranteed	394		
			(3) Optional quality terms	396		
6.	Intel	lectual	property, free movement and competition	398		
	6.1		movement of goods – an introduction	398		
		6.1.1	Overview of the problem – three typical cases	398		
		6.1.2	Intellectual property rights – different rights have different			
			purposes	404		
	6.2	Intelle	ectual Property and free movement of goods in the EU	406		
		6.2.1	The treaty: the basic legal framework	406		
		6.2.2	Early case law: the distinction between existence and exercise			
			of rights	407		
		6.2.3	Specific subject matter: definitions	408		
		6.2.4	What is 'consent' for the purposes of exhaustion of rights?	413		
			6.2.4.1 Trade marks and the retreat from common origin	413		
			6.2.4.2 Patent rights and the nature of consent	417		
			6.2.4.3 Copyright and neighbouring rights: exhaustion			
			beyond the distribution right?	418		
	6.3	Repac	kaging: balancing the principle of free movement against the			
		-	mark owner's rights	423		
		6.3.1	Pharmaceuticals	423		
		6.3.2	Repackaging principles – application to other products?	434		
	6.4		f another's trade mark in advertising	436		
	6.5		s in transit	441		
		The B	Border Measures Regulation 44			
	6.6		stion: national, EEA-wide or international?	446		

		Cont	<i>tents</i> xi
6.7	Comp	etition law and intellectual property	457
	6.7.1	Article 101	459
		Assignments	459
		Licensing agreements	460
		The modern approach to the licensing of intellectual propert	ty 462
		Copyright licensing – the challenges of the digital market	463
		Collecting societies	467
		Article 101 and the pharmaceutical industry	472
		Block exemptions – technology transfer	477
	6.7.2	Article 102	483
		Abuse of a dominant position within the internal market	483
		Refusal to supply, refusal to license on reasonable terms	484
		Standard essential patents	493
		Should the pharmaceutical sector be treated as a special	
		case for the purposes of Article 102?	495
7. Enfo	orcemen	t of intellectual property rights	502
7.1	TRIPS		502
7.2	Europe	ean Community Measures	505
	7.2.1		508
	7.2.2	Border measures	512
		Jurisdiction - The Brussels Regulation	515
	7.2.4		519
Index			521