

(h) Summons to Show Cause and Writ of Imprisonment (Cap. 4, Ord. 46r.1)

The mode of execution known as summons to show cause and for the imprisonment of the judgment debtor under the above rule of Cap. 4 does not feature under C.I. 59

It appears that the reason for the exclusion of this mode of execution for the payment of money under C.I. 59 may be due to the decision in the case *Republic v Ex parte PPE Ltd* (supra) where it was decided that no person ought to be imprisoned for non-payment of a judgment debt where there are other lawful modes of execution. This decision coming from the highest court in the land is binding on the District court.

CONCLUSION

The C.I. 59 just as any new law may as well have to go through the necessary teething process and metamorphoses and for other conflicting and novel aspects of the law to be settled through appeals, references and consequential court decisions. Special acknowledgement must go to Justice Brobbey for the gift of his two books to Magistrates in Ghana notably *Practice & Procedure in the Trial Courts and Tribunals of Ghana (2001) Vol.1 and the 2011 edition thereof*. His books are without doubt, the District Court Manuals (D.C.M), without which a magistrate may be lost in the wilderness. The books equip magistrates with the right legal tool for navigating through the turbulence of the profession.

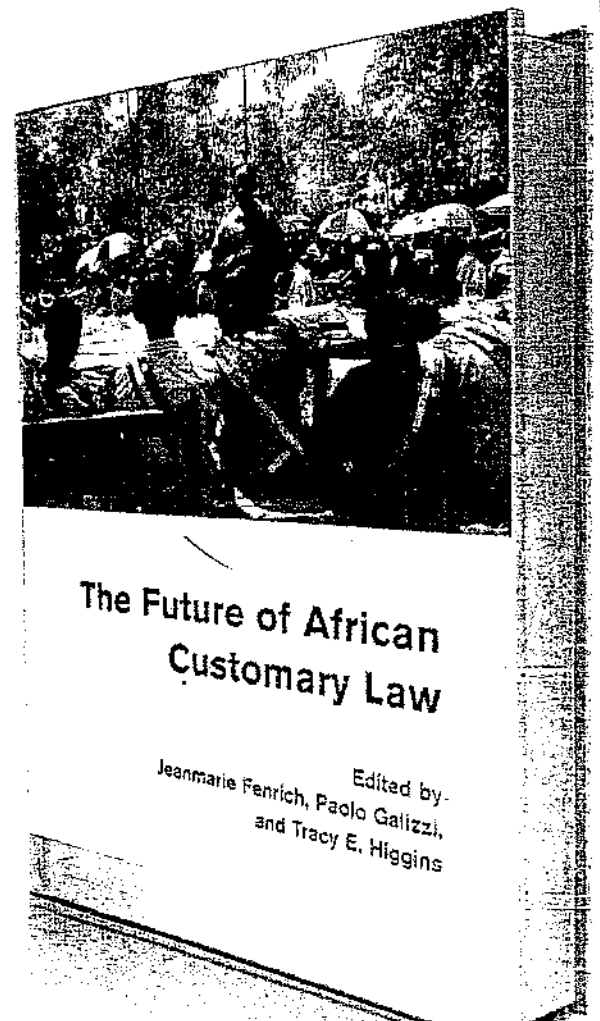
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BOOK Description

THE FUTURE OF AFRICAN CUSTOMARY LAW
Contributory Article by Justice Akamba

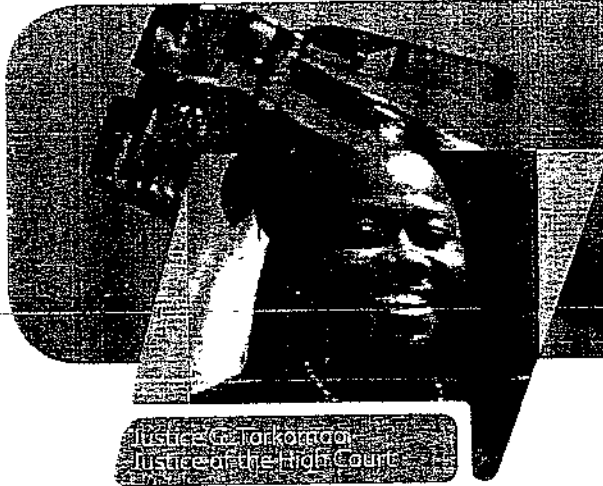
Customary laws and traditional institutions in Africa constitute comprehensive legal systems that regulate the entire spectrum of activities from birth to death. Once the sole source of law, customary rules now exist in the context of pluralist legal systems with competing bodies of domestic constitutional law, statutory law, common law, and international human rights treaties.

The Future of African Customary Law is intended to promote discussion and understanding of customary law and to explore its continued relevance in sub-Saharan Africa. This volume considers the characteristics of customary law and efforts to ascertain and codify customary law, and how this body of law differs in content, form, and status from legislation and common law. It also addresses a number of substantive areas of customary law including the role and power of traditional authorities; customary criminal law; customary land tenure, property rights, and intestate succession; and the relationship between customary law, human rights, and gender equality.



Culled from Amazon.com*

*<http://www.amazon.com/Future-African-Customary-Law/dp/0521113530>



What are the computer and internet doing to intellectual property?

Keeping up with the Internet and Computer Technology

Traditional intellectual property law scans the protection and enforcement of copyrights, trademarks, patents, trade secrets and fair competition. The burgeoning use of computer software for every form of technological innovation and the use of the internet for transmission, distribution and communication of information are creating new arenas of experiences which require a rethinking of the application of the usual principles used to protect and enforce intellectual property law. This paper looks at a few of these issues which have actively engaged the courts in the United States because of the dynamic development of computer and internet technology in that jurisdiction. The hope is that this discussion will provoke consideration of the reasoning from this common law jurisdiction when Ghanaian Judges are faced with similar issues, as the country braces itself for increased internet activity and industrial development using technology. Since the biggest controversies around software have related to the right to rights while those around the internet have centered on the right to protection, this paper will examine them under those headings.

THE RIGHT TO RIGHTS

Trademarks have the primary objective of identifying businesses and distinguishing the products of different businesses. Branding software with trademarks such as Microsoft and trade names such as 'Lotus 123', 'Power point', 'Word XP' presents little difficulty in legal conceptualization, making protection with traditional principles easy.

In the same vein, it is now established that both the object and source codes of software are copyrightable, and protectable as a **trade secret** so long as the conditions for protect-ability exist – especially if the effort by the secret holder to keep the interpretation of the codes secret is established. The visual and audio presentation or graphic user interface of software, icons, symbols and fonts are **copyrightable** if they are not functional and they constitute enough original creative expression of the ideas they communicate.

The requirement for fixation¹ for copyright-ability has been actively contended in the operation of interactive software such as is found in games like Nintendo etc. The argument is that because the images produced from operation of the software are not stable, but take

on whatever character (sometimes running, jumping, shooting etc.) depending on the choices of the game operator; such features cannot be described as fixed enough to pass the test of fixation.

In *Stern Electronics v. Kaufman*, 1982 669 F. 2d 852, the U.S. Court of Appeals for the Second Circuit held that because the images in an arcade game are fixed through the arrangement of the software, and many aspects of the sights and sequence of image occurrence remain constant when particular choices

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are made by the gamer, the game is copyrightable as an audiovisual work. The plaintiff software developer could copyright the images and sounds in the game. Section 76 of our Act 690 defines "fixation" as *'the embodiment of sounds and or'*

imagesor of representations made from which the sounds 'and or' images....can be perceived, reproduced or communicated through a device'.

So as long as images or sounds or any representations of them are embodied in such a way that they can be perceived, reproduced or communicated through a device, our law deems them sufficiently fixed as a requirement for protect-ability. In its requirements for fixation Section 101 of the USA's American law places emphasis on the element of time that an image appears, unlike Ghana law which requires a threshold of embodiment or the capacity within a device to produce the image or sound for a finding of fixation².

Patentability

As much as the patentability of innovation in the hardware of computers had never been in issue, the intense quibble about the patentability of software from the 1950s arose because of the essential character of software. The source code of software is expressed as a mathematical algorithm, whose operation within the hardware of a computer produces images and sounds intelligible to the average person. The debate therefore was – could mathematical algorithm, essentially a functional device for computations, be patented as an invention if its particular arrangement could achieve a 'new and useful process, or capacity

to manufacture or create composition of matter?'³ In **Gottschalk v. Benson**⁴ the Supreme Court held in 1972 that mathematical algorithms, like the numerical conversion software in that case, are not patentable because *"mental processes and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work.....much like laws of nature and naturally occurring products"*.

In 1981 the Supreme Court finally brought to rest arguments on the patentability of software in **Diamond v. Diehr**⁵ when software using the 'Arrhenius equation' was declared patentable because the software comprised part of the invention of a new and useful rubber-curing process. The focus in **Diehr** on what gave rise to the patentability of that software centered on the software being used through hardware. Further, the patent application made no claim to the equation except to its use as part of an inventive process. It must be noted that **Diamond v. Diehr** did not address the issue raised in **Benson** about mathematical algorithms being in the nature of 'mental processes'.

Thereafter, various contentions continued to range on the context for finding the patentability of software. These contexts were resolved at various times to be if the software was affixed to a machine;⁶ or if a machine programmed with soft-

ware produces a "useful, concrete and tangible result" even if the useful result is expressed in numbers⁷; or the software caused a transformation of data into useful information through a machine⁸.

In 2008, applicants Bernard L. Bilski and Rand A. Warsaw appealed to the Federal Circuit of Appeals from the final decision of the Board of Patent Appeals and Interferences against their rejection of all eleven claims in their U.S. Patent Application.

The applicants were seeking to patent both the concept of hedging risk and the application of that concept to energy markets as an exclusive invention of a purely business method. The patent examiner rejected the application on the grounds that the invention is not implemented on a specific apparatus, merely manipulates an abstract idea, and solves a purely mathematical problem. The Federal Circuit of Appeals agreed with the USPTO and the Board of Appeals and in its decision evolved a '*machine - or - transformation*' test to the contexts for patentability. It interpreted the decision of the Supreme Court in **Benson** as determining that a claimed process is eligible for the grant of a patent if the process is tied to and conducted through a particular machine or apparatus or it transforms a particular article into a different state or thing. An appeal against the decision went to the Supreme Court.

In the 2009 decision of the Supreme Court in **Bilski et al v. Kappos**, Under Secretary of Commerce for Intellectual Property and Director, Patent and Trademark Office, the court examined all these decisions on the various contexts for patentability and of software and

¹ See Section 1 (2) (b) of the Copyright Act, 2005 (ACT 690).

² "sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration."

³ Patent Act, 35 U. S. C. §Section 102

⁴ 1972 409 U.S. 63, at 67

⁵ 1981 450 U.S. 175 at 185

⁶ PTO guidelines in 1995, after rejecting a patent claim by IBM to "software contained on a floppy disk" concluded that Computer programs are not patentable unless encoded into a computer readable medium, since they are merely a set of instructions

⁷ State Street Bank & Trust Co v. Signature Financial Group, Inc., 1998 149 F. 3d 1368, 1373

⁸ In **AT&T Corp. v. Excel Communications**, 1999 172 F.3d 1352, AT&T had obtained a patent entitled "Call Message Recording for Telephone Systems" for a process that generated a message record for long distance phone calls which added a primary indicator that permits differential billing treatment depending on whether a subscriber calls someone with the same or a different long distance carrier. The court found patentability of the software in issue because it comprised a valuable mathematical algorithm which transformed data into a number that had specific meaning

debunked their application as legal factors and tests. While upholding the decision of the Court of Appeal to affirm the refusal of the patent, the Supreme Court disagreed with the Court of Appeal on the 'machine-or-transformation' test, and the "useful, concrete and tangible result" test evolved from the **State Street Bank** case 1998. It held that these tests violated two principles of statutory interpretation namely that 'Courts should not read into (patent) laws limitations and conditions which the legislature has not expressed'; and "unless otherwise defined, 'words will be interpreted as taking their ordinary, contemporary, common meaning.' The Supreme Court did not see how 'any ordinary, contemporary, common meaning of "process" would require it to be tied to a machine or result in the transformation of an article.'

Apart from this radical set back to these tests evolved after the **Benson** case, the Supreme Court revolutionized the categories of patentable materials that had hitherto been accepted. Prior to its decision in **Bilski**, it had become understood that business methods were essentially ideas and so could not be patented. The court drew attention to the inclusion of 'methods' in the definition of processes and declared business methods patentable if they passed the test of novelty, utility and non-obviousness required before any subject matter could be patented. In its evaluation, it failed to see how patenting business methods would stultify the growth of technology as had been alleged in the arguments against the business method in the dispute. On the specific issue of the patentability of the concept of hedging risk and the application of that concept to

energy markets, the Supreme Court declared them to be un-patentable processes because they constituted the utilization of an abstract hedging idea.

An essential feature of the **Bilski** decision is that the Supreme Court refused to define further what constitutes a patentable "process," beyond pointing to the definition of that term provided in the law and looking to the guideposts of previous decisions, especially, **Benson** and **Diehr**. Thus in 2009, the **Bilski** Supreme Court decision removed the constrictions of tests that interfere with a true and proper interpretation of what is patentable under law. It was reminiscent of their decision in **Diamond v. Chakrabarty** 1980 447 U.S. 303 when the patentability of an organic material achieved through an inventive process was raised. The court's decision affirming the patentability of organic materials removed the bars previously confining an understanding of patentability to synthetic material. It declared in that case that patentable subject matter "include anything under the sun that is made by man," if it passed the test of law to wit - it was not naturally occurring material, a naturally occurring phenomenon or an abstract idea.

THE INTERNET

How are the courts coping with the phenomenal capacity for infringement of trademarks, copyrights, trade secrets and patents through the internet? In its 28th May 2011 issue, **THE WEEK**⁹ discussed a case that it described as 'Britain's worst kept secret'. The married Premiership footballer **Ryan Giggs** was alleged to have been having an affair with a TV personality. He obtained

an injunction to prevent the media from publishing stories on the issue. Following incorrect reports that he was seeking to sue users of Twitter who had published details of his injunction, 'Twitter users responded by posting his name more than 75,000 times'. The injunction to restrain publication of reports on the matter in dispute became useless as the information travelled out of the control of courts. The comment of **THE WEEK** was that 'The law surrounding privacy injunctions (had) reached breaking point, as...gagging orders were breached'. Quoting **The Times** as saying 'the internet 'is making an ass out of the law', and the **Daily Mail** as saying that 'the age of the super-injunction must surely be drawing to a close', the opinion of **THE WEEK** was that 'for too long, the 'over-mighty' judges have 'usurped powers...., gagging free speech and even questioning the public's rights to be informed.'

The above case may have been dealing with a dispute on the right to information, but it directly shows the strains the internet has brought to orders that may be issued to protect breach of copyright, trademarks and even trade secrets. With one click of a button, an infringed trademark can be used in channels of trade reaching millions of people, and incalculable harm will result to the original rights holder. Through the power of the internet, the capacity to multiply information transmission has become so high that, the traditional ability to enforce copyright, rights to trademarks, trade secrets and patented formulae now requires more than injunctions and destruction orders. So what can the courts do to provide effective solutions?

⁹ Issue 829

INFRINGEMENT AND DEFENCES

Again, traditional principles have been called to the rescue and factors developed to assist in the use of a court's discretionary authority.

Fair Use

In *Kelly v. Arriba Soft Corporation* 2002 280 F.3d 934 the Third Circuit Court of Appeals had to deal with the often raised defense of fair use when access to plaintiff's copyrighted photographs on the internet was given to multiple third parties by the defendant search engine in response to searches done on defendant's site – though defendant had no license to use the pictures. The search engine Arriba got its database by copying full sized images into a database and using a program to create small thumbnails after which the program deleted the full-sized originals from the defendant's server. Users of defendant's search engine could copy the thumbnails without changing the resolution of the pictures, making enlargement impossible because that would degrade the image quality. Secondly, by clicking on the thumbnail, the defendant's server brought the searcher to an 'Image Attributes' page which consisted of a reduced sized version of the original picture with text describing the image and ascribing authorship to the plaintiff. Around that image was a frame in which the defendant had placed its own banner and advertisement of businesses seeking to reach searchers of products such as the plaintiff's. A second 'in link' or 'source link' on the attributes page led to the plaintiff's original image on the plaintiff's server.

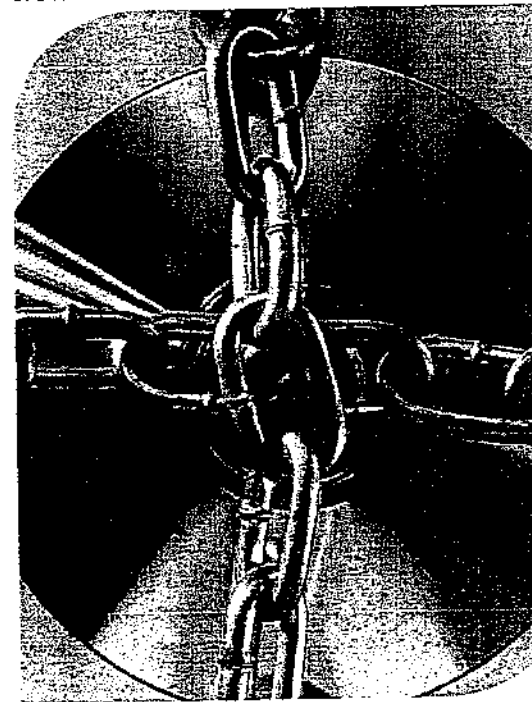
Thus through these links, the defendant discharged its attribution burden as a function of copyright

law, while making the plaintiff's work accessible to searchers interested in plaintiff's photographs by a link, and made money from the image attribution frame by selling advertising space to other businesses who wanted to reach those searchers, and also managed to advertise its own business. Since the making of a first copy for research and other non-commercial purposes would be fair use of copyrighted work, the issue was whether defendant had infringed plaintiff's copyright to transformation and distribution of its work and whether the defense of fair use fit the use to which defendant put plaintiff's photographs.

In evaluating whether or not to uphold the defense of fair use regarding the creation of the thumb nails, the Court of Appeals balanced the weight of the four factors in any assessment of fair use, namely the purpose and character of the infringing use; nature of the copyrighted work (the more creative the work, the more courts are required to protect same); amount and substantiality of portion used in the infringing work; and the effect of the infringing use upon the potential market for or value of the copyrighted work.

The court of appeals held that on the balance of the factors, the purpose and character of use for thumbnails favored a finding of fair use. While admitting that the photographs were highly creative and deserving of protection, they reiterated that the more transformative of an original work a new creative use is, the more deserving the new work is of protection, rendering the other factors less weighty. The thumbnails were highly transformative of the original work and incapable of being seen in the same manner as the original work without destroying

the resolution of the original image. They also served a wholly different function of providing access to information and therefore their use could not affect the potential market for or value of the copyrighted work which constituted purely creative and artistic expression. The court reasoned that although Arriba's use of Kelly's images was commercial, it was indirectly commercial and not exploitative of the original images in the kind of commerce the Plaintiff was engaged in. Finally, by creating thumbnails and the smaller sized version for the image attribution



page, Arriba had used only as much was required for its search engine purposes.

Indirect and Contributory Infringement

But what about situations where the defendant only creates access to plaintiff's work without any creative transformation? In 1984 and in *Sony Corp. of America v. Universal City Studios, Inc.*, 1984 464 U.S. 417 (1984), Sony was sued for creating the VCR which allowed users

to make individual copies of copyrighted works to watch at a time different from when the show was broadcast on television. This was a concept referred to as time shifting. The Supreme Court held that the copies made with the VCR for time shifting purposes did not constitute copyright infringement but fair use. The court also held that since the VCR had substantial non-infringing purposes, Sony could not be held liable for contributory infringement. This gave legal protection to technology which could be used in infringement as well as other purposes, especially where the creator of the device did not themselves participate in the infringement or know when the infringement took place.

In 2001, the 9th Circuit of Appeals dealt with the case of **A & M Records v. Napster Inc.**, 2001 239 F.3d 1004 and the Supreme Court dealt with similar facts in the case of **MGM Studios, Inc. v. Grokster, Ltd.** 2005 545 U.S. 913 in 2005. Napster and later, Grokster operated a system that allowed users to make files available for copying by other users, search for mp3 files on other users' computers, and transfer copies of the mp3 files via the Internet. This is a technology that had been developed by Universities and institutions that needed to share files. Users would first download free MusicShare software from Napster and use the software to access the Napster system. The users could then create a directory by saving the names of copyrighted music and video files on their hard drives. When they logged onto the Napster system, the MusicShare software would upload the names of their files to Napster's servers, where they become part of a collective directory; though the actual music files remained on the user's com-

puters. Napster's search function used the file names and information that were uploaded by users onto the Napster server to connect users who did direct peer to peer copying outside of Napster's servers. Practically, Napster did not know when the copying was done though they provided the system for sharing of billions of files each month – with a potential scope for infringement which was staggering. The evidence was that both Napster and Grokster had expressed the intention of assisting in copyright infringement.

Both **Napster** and **Grokster** had received money by streaming advertisements to users on their web sites, so the more popular the works exchanged, the more money they would receive. The business model therefore indicated a desire to use the copying of copyrighted works for money. The issue raised was whether the system managed by **Napster** and **Grokster** had substantial non-infringing uses and if so, under what conditions would contributory infringement occur since the defendants were not themselves involved in the copying.

The decision of the Court of Appeal in **Grokster** case, following after the direction of **Sony**, was that in situations where a system used for infringement had substantial non-infringing uses, a finding of contributory infringement could only be made if the distributor had actual knowledge of specific instances of infringement and failed to act, and there could be no vicarious liability because defendants did not monitor or control the use of the software. The Supreme Court reversed the decision and introduced the doctrine of 'inducing infringement', explaining 'inducing' to mean the taking of active steps to encourage

direct infringement, such as advertising an infringing use or instructing how to engage in an infringing use. It went further to state that although the rule had previously been implied in patent law, there was no reason to refrain from applying it in copyright law. The court found substantial evidence of inducement to merit the application of appropriate principles for a finding of liability and penalties, because of the income generating capacity of the use. Essentially, those who provided the means for infringement without directly infringing copyrighted works could not hide behind an argument that the device used for infringement had substantial non-infringing uses if their intention to induce infringement through the device was part of the evidence.

Use In Commerce

An important part of the evaluation on liability has always been whether the markets of the two businesses are the same, whether the defendant actually used the plaintiff's copyrighted material and whether it was used in commerce.

This reasoning is echoed in cases brought against search engines such as Google where the courts have focused on whether trademarks and copyrighted work are being 'used in commerce'¹⁰ when search engines provide links to them as an integral part of providing search results. Google's use of trademarks as a product sold on the internet has been at the center of controversies on the use of trademarks on the internet. As part of its business, Google sells what it calls 'adwords' or 'keywords' to users of the internet for e-commerce. On purchase of a particular word, any time a searcher keys in that word,

the websites of the business which has paid for the 'keyword' or 'adword' will be immediately projected by Google's search engine. The difficulty arises when that 'keyword' is the trademark of another business. A high price is paid for these trademarks as 'keywords' and searchers are sent to sites displaying competitive goods who essentially have the capacity to hijack the goodwill of a trademark through Google searches.

In the 2009 case of **Rescue.com v. Google**, the District court had ruled that AdWords did not violate trademark law because so long as the prospective customer is not intentionally led to the actual trademark of the complaining business (eg the words 'ShopRite' with their peculiar arrangement and coloring is the trademark, as opposed to the words Shop and Rite standing together without the total depiction created in the Trademark), the adoption of the word(s) for use as a key word or Adword did not constitute a "use" of the trademark within the meaning of trademark law. The court ruled that neither Google nor the AdWords participants had "used" the trademark "in commerce". The 2nd Circuit of Appeals in **Rescue.com v. Google** No. 06-4881-CV, April 3, 2009, reversed this holding on the grounds that recommending and "selling" a mark to an advertiser to trigger a sponsored link could violate trademark law.

Functionality Doctrine

By 2010, this position had been given another twist. In **Rosetta Stone v. Google**, the famous language learning business sued Google for selling 'Rosetta Stone' as an Adword. In April 2010, the District

Court granted summary judgment for Google citing the 'the functionality doctrine'. The reasoning of the court was that in order to appropriately undertake its 'essential indexing function', Google had to have recourse to the use of words. Preventing the use of trademarks in that function would affect the cost and quality of Google's Adword program. Thus by the operation of the functionality doctrine which prevents exclusive appropriation as an intellectual property any feature of a product which is essential to the cost, quality and use of the product, the courts would not assist trademark owners to protect from third party use, functional features of the mark. The case is currently under review at the 4th Circuit of Appeals and can be followed on <http://dockets.justia.com/docket/circuit-courts/ca4/10-2007/>. Interestingly, Google's trade mark policy states.

"Google recognizes the importance of trademarks. Our AdWords Terms and Conditions prohibits intellectual property infringement by advertisers. Advertisers are responsible for the keywords they choose to generate advertisements and the text that they choose to use in those advertisements. Google takes allegations of trademark infringement very seriously and, as a courtesy, we investigate matters raised by trademark owners. Trademarks are territorial and apply only to certain goods or services. Therefore, different parties can own the same mark in different countries or different industries. Accordingly, in processing complaints, Google will ask the trademark owner for information regarding where the mark is valid and for what goods or services." See also the AdWords Terms and Conditions¹¹.

REMEDIES

The traditional role of the common law courts is not to assist any party to achieve their claims but to 'hold the scales evenly and fairly between the parties appearing before'¹² the court. To do so requires a pure application of law to any set of facts. Thus notwithstanding the rapidly changing dynamics of the market place as a result of the internet, courts must confine themselves to applying enforcement measures squarely premised in law. The traditional arsenal of remedies include injunctions, both preventive and mandatory for the purpose of compelling activity such as disclosure of information, orders for delivery up for the purpose of halting the infringement, destruction, forfeiture, damages including additional damages¹³. In the peculiar circumstances of breach of intellectual property rights through the use of infringing software and its use through trading on the internet, it is now largely settled in the United States that the principles, standards, and factors necessary for the applicability of these remedies remain the same, notwithstanding the uniqueness of the electronic terrain.

In **EBAY INC. ET AL. v. MERCEXCHANGE, L. L. C.** L.L.C., 2006 547 U.S. 388 decided on May 15, 2006 the Supreme Court of the United States jolted industry, academia and the commercial world when it held that "The traditional four-factor test applied by courts of equity when considering whether to award permanent injunctive relief to a prevailing plaintiff applies to disputes arising under the Patent Act. That test requires a plaintiff to demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at

¹⁰ The Trademark Act uses the expression 'channels of commerce'

¹¹ <https://adwords.google.com/select/tsandcsfinder>

¹² Page 12 of the Speech delivered by the Honourable Chief Justice at the AGM of the AMJG on 30th September 2010



law are inadequate to compensate for that injury; (3) that considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. The decisions to grant or deny such relief is an act of equitable discretion by the district court....these principles apply with equal force to Patent Act disputes.'

Industry was jolted because the position had become accepted that in order to preserve the exclusive rights to patents in rights holders, an injunction to restrain their continued infringement was a sine qua non. The market effect of this position was that even though a patent may be held by a researcher who was not using same to develop the market, industry could not have access to it without the peril of an injunction restraining use.

This locked up innovations in technology and allowed access to patents by only the highest bidders who could negotiate licensing agreements found satisfactory by the patent holder¹³. By reiterating the traditional factors underlying the grant of injunctions as the only grounds for granting same in cases of patent infringement, courts were now reminded to ask whether a particular plaintiff would suffer irreparable damage that could not be compensated for in damages if the injunction is not granted and

whether the public interest would be served better by injuncting the use of a patent in technology, albeit through infringement, instead of keeping it locked up with a rights holder who is waiting for the highest bidder.

In this particular case, E-Bay, which operates a popular Internet Web sites that allows private sellers to list goods for sale and auction them to the highest bidder was alleged to have infringed the Respondent's business method patent. Negotiations to license the patented method to EBay failed and in the subsequent patent infringement suit, the District court ruled that damages were appropriate instead of a permanent injunction to restrain continued infringement. The Federal Circuit reversed the decision and applied what it described as its "general rule that courts will issue permanent injunctions against patent infringement absent exceptional circumstances." The Supreme Court disagreed and brought everyone back to earth with the equitable factors underlying the grant of injunctions. It stated that 'the creation of a right is distinct from the provision of remedies for violations of that right'. The net effect of the decision was to remind industry that the law did not only serve rights holders, but the public at large. The underpinning objective behind the grant of patents expressed in Article 1, Section 8, clause 8 of the United States Constitution which authorizes Con-

gress to make laws to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries" was reaffirmed

Conclusion

Notwithstanding the extremely dynamic, slippery and unusual terrain of the internet and computer technology, as always, the law has risen to provide answers. To the extent that traditional principles can be applied, they have. Where new thinking needs to be introduced, legal philosophy has attempted so to do. Because of the limitation of space and objective of writing, this article could not touch on many interesting aspects of e-law such as jurisdiction of courts in matters occurring in cyberspace and multiple uses of particular words and names as domain names. Hopefully an opportunity will arise another day. But in all this, a relevant question is - what is the way forward with the interactive use of creative works by the faceless, non-locatable hordes who use Face Book and Twitter, and the new works these users upload as contribution to 'Y Reports? It bears thinking.

¹³ Extensively provided for under Order 63 of High Court (Civil Procedure) Rules, 2004, C. 1. 47

¹⁴ See particularly the reasoning of JUSTICE KENNEDY, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER concurred