///// Diverse understandings

Artificial Intelligence cannot be appointed as inventor in patent application

In opinion No. 00024/2022/CGPI/PFE-INPI/PGF/AGU, the BPTO's Specialized Federal Attorney's Office issued its opinion regarding the impossibility of appointing or naming artificial intelligence as the inventor of a patent application filed in Brazil.

This understanding concerns the recent filing in Brazil of international patent application PCT/IB2019/057809, whose inventor is "Dabus", a machine provided with artificial intelligence (AI) that was created by applicant Stephen Thaler for it to develop unusual ideas.

The opinion shows that Article 6 of Law No. 9,279/1996 (Brazilian Industrial Property Law - IPL), regarding patent ownership, indicates that the nature of the inventor is related to a human person, since the rights granted to the inventor are derived from personality rights. Furthermore, in the opinion issued it was also highlighted the need of a specific legislation on the inventiveness developed by AI, which still needs to be drafted and probably should be preceded by the execution of specific international agreements with the purpose of standardizing principles for the protection of national ordinances.

Please find the complete Opinion here.

The misuse of CBF's image in a Soccer World Cup year

According to a survey commissioned by the Sports Industry and Trade Association (ÁPICE) and conducted by the Intelligence in Research and Strategic Consultancy (IPEC), sports companies lost about R$ 9 billion due to piracy actions, while the Government was not able to collect about R$ 2 billion in taxes in 2021 due to the counterfeit goods market.

With the FIFA World Cup around the corner, this is one of the concerns of the Brazilian Soccer Confederation (CBF), since out of 10 shirts of the Brazilian team sold in the country, four are counterfeit, according to a study conducted by the National Forum against Piracy and Illegality (FNCP) in 2020. Besides the counterfeits of CBF articles, another point of great concern is the misuse of the Brazilian team's brand and image.

In this sense, one of the most recurrent cases of violation of use of CBF trademark and image is the so-called "ambush marketing", which is characterized by the unauthorized use of images of sporting goods and uniforms that refer to the Brazilian Nacional Team. In these cases, the company not associated with CBF makes use of the Brazilian National Team's brand reputation and strength to promote its own products.

As an example of that practice, there is an emblematic case, ruled in 2013 by the Superior Court of Justice, involving a famous soft drink company, which used in its campaign former players of the Brazilian National Team wearing uniforms very similar to those of CBF in order to induce consumers to associate the success of the Brazilian team to the soft drink promoted. In this case, it was proven the possibility of association of the campaign (and as a consequence of the advertiser and its products) with the Brazilian National Team through the imitation of the official uniform, and the Court ordered the company to indemnify CBF for the profits arising from the unauthorized use of CBF's image within an advertising campaign.

Furthermore, another type of violation of CBF's rights is counterfeiting. For example, the counterfeiting of CBF sporting goods, which are sold to consumers as if they were official Brazilian National Team items. According to Brazilian legislation, this type of conduct can be held accountable in both the civil and criminal spheres, so that there is already consolidated case law in this context.

Brazilian Chamber of Deputies approves the adhesion of Brazil to the Hague Agreement

The Brazilian Chamber of Deputies published, through the Committee of Foreign Relations and National Defense, at the end of August, the Legislative Decree Project No. 274, of 2022. The Commission approved the Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs, of 1999, so that Brazil will adhere to its provisions.

The proposal, however, will still be analyzed by the Brazilian Senate. The Hague Agreement, in a nutshell, seeks to simplify the procedures and cut costs for the registration of Industrial Designs abroad, a measure that benefits foreigners who wish to register Industrial Designs with the Brazilian Patent and Trademarks Office, the INPI.

Moreover, the adhesion will also benefit Brazilians who register industrial designs by means of an international application through WIPO - the World Intellectual Property Organization - in 94 countries.

Senator Paim intends to ensure temporary patent breaking in cases of health emergency

After a complete veto by Brazil's President Jair Bolsonaro, Bill No. 2,505/2022 was resubmitted by Senator Paulo Paim (PT-RS) in order to ensure that information for reproduction of patent-protected technologies is available in cases of emergency or public calamity, for purposes of dealing with them.

The granting of a patent is based on the encouragement of innovation and the benefit that society will have after its expiration, by being able to reproduce it freely. However, the senator argued that many times the patent requests are written in an implicit way, which prevents the reproduction of the inventions.

According to the senator, the law that would enable the temporary breaking of patents on vaccines and medicines to deal with health emergencies would contribute to a larger scale production at lower prices. Therefore, the senator believes that the temporary breaking of patents would allow helping poor countries that have not been provided with vaccines and would strengthen the national technology and industry.

"Top Gun" lawsuit brings questions of copyright licensing to Hollywood

A lawsuit, filed in the first half of 2022 by the heirs of the creator of the story that inspired the first "Top Gun" movie, seeks to collect damages for copyright infringed by Paramount Pictures regarding the "Top Gun: Maverick" sequel film.

The family of Ehud Yonay, creator of the 1983 story that inspired the first "Top Gun," accuses the second film of being an "obvious derivative" of Ehud's story.

More importantly, considering that at the time of the first film the studio had the copyright to the article, it is up for debate whether the 35-year copyright period allowed under U.S. law would have covered the production of the second film, or whether it would have been finished out of the period.

Use of competing companies' trademarks in keywords on sponsored links constitutes unfair competition

On August 23, 2022, the Superior Court of Justice (STJ) decided, through REsp No. 1.937.989/SP, that the use of the name or trademarks of competing companies in the keywords in sponsored links of Google Ads (or other paid traffic platforms) is considered an unfair competition conduct and sentenced the offending company to a fine of R$ 10 thousand as moral damages.

Sponsored links are used by advertisers to have their websites displayed prominently in the results of searches made by users in digital media. However, some of these advertisers have used names and trademarks of competing companies as the keyword. Consequently, when the user searches for the competing trademark, the website address of such advertiser will appear prominently in the result of this search.

According to the STJ, the advertiser who uses that method has the objective of diverting customers from the competing company and taking advantage of its fame and notoriety, constituting a crime of unfair competition.

However, some economists believe that method is a way of giving small companies an opportunity to become known and that the limitation of the use of keywords in sponsored links would restrict the consumer's access to information and affect the free competition.

This decision is certainly considered a milestone for the intellectual property and it is expected that it will directly reflect on the forms of commercialization in current digital media.

Judge condemned company partners for patent infringement

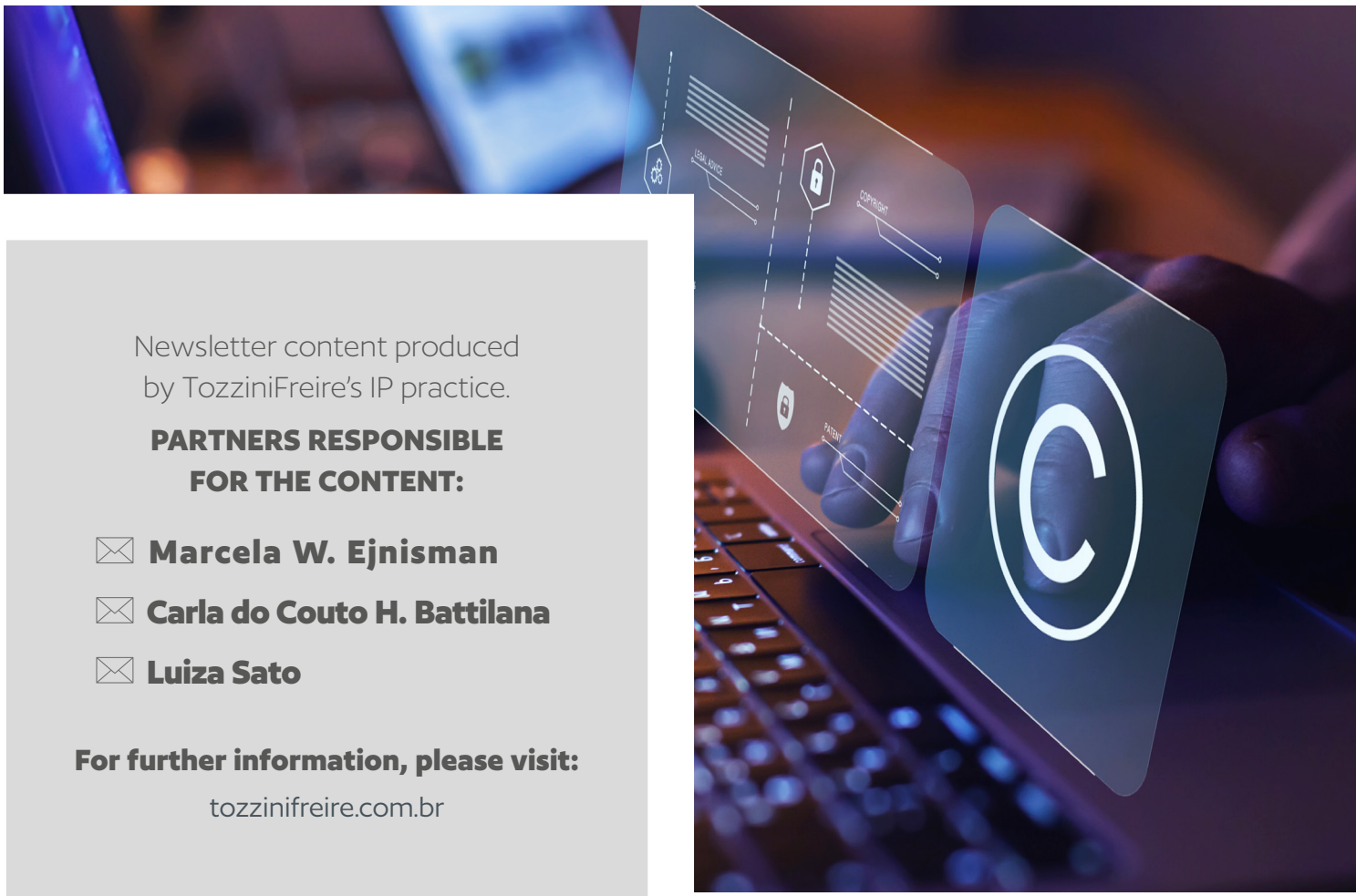
The First Criminal Court of São Paulo sentenced two partners of a company that operates in the plastics industry to seven months of open-ended detention for infringing the patent rights of another company.

In 2013, these partners exposed, at a public event, an equipment equivalent to boxes for passing wires for air conditioners, stating that they were manufactures of this equipment. However, such equipment was similar to the equipment developed by a company, which owns industrial designs registrations duly granted by the Brazilian Patent and Trademark Office (BPTO).

The infringing company also sold such equipment at a lower price than those sold by the company that owns the intellectual property rights, which results in unfair competition.

Although decisions like this are still uncommon in Brazil, our Courts have been increasingly adept at holding accountable and applying the penalties applicable to partners of companies who violate third parties intellectual property rights.

Finally, in this case, the penalty of detention for seven months may be converted into the payment of 30 minimum wages. It is still possible to file an appeal against this decision.



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