

## EU POLICY IN THE FIELD OF INTELLECTUAL PROPERTY

### PRIOR TO THE MID 80'S

- i) **Not legislative** in nature: ECJ decisions and Commission actions were the effective means to affect existing Law. Legislative initiatives failed (Community Patent Convention) or transcended the EU (European Patent Convention)
- ii) Substantially, a **by-product of other policies: free movement of goods and competition**
- iii) Results: some **restrictions on the exercise** of IP rights, but not on its rationale, purpose and content
- iv) Basically,  
**exhaustion doctrine** (prohibition to exercise IP rights to control resale, importation or exportation of goods inside Europe) ex art. 28 and 30 EC Treaty, and

restrictions of certain practices and clauses in **licensing and assignment** of IP rights in horizontal and vertical relationships, ex art. 81 and 82 EC Treaty

## AFTER THE MID 80'S

- i) **Legislative in nature:** Directives to harmonize national Laws and Regulations establishing European wide IP rights
  
- ii) **Autonomous IP policy:** Intended goal is to achieve a **specific European approach to innovation through IP rights**
  
- iii) **Differentiated approach in the 3 major areas of IP Law**

### Copyright:

Build upon the **basis** of the existing harmonization following the **Berne and Rome Conventions**

Approximate the existing national legislations as much as possible, specially in new subject matter (computer programs, databases) and uses (digital uses), and concerning areas in which there was wide disparity (term, neighbouring rights), and internal market and competitive issues might be at stake

Do **not** create an **EU Copyright system** as such (but the Information Society Directive might be the first step in this direction)

### Patent:

**Respect** the existing European (but not just EU) Patent structure: the **EPC**

Minor but **strategic interventions** to harmonize national Patent Law in hot areas of Patent rights: SPC, biotechnology

Create a parallel system of EU Patent right, Law and Jurisdiction (still not completed)

### Trademarks and Design:

Heavily harmonize the substantive content of national TM and Design Law

Create a parallel system of EU TM and Design rights, Laws, and Agency (the OHIM in Alicante)

## EUROPEAN DIRECTIVES IN THE FIELD OF COPYRIGHT

- Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs
- Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property
- Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission
- Council Directive 93/98 /EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights
- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases
- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society

- Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art
- Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on enforcement of intellectual property rights

## INTERNATIONAL INSTRUMENTS IN THE FIELD OF COPYRIGHT

- Berne Convention for the Protection of Literary and Artistic Works (Paris Text, 1971)
- Universal Copyright Convention (Paris Text, 1971)
- WIPO Copyright Treaty (Geneva, 1996)
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention, 1961)
- WIPO Performances and Phonograms Treaty (Geneva, 1996)
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva Phonograms Convention, 1971)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement, 1994)

## EUROPEAN INSTRUMENTS IN THE FIELD OF PATENT

- Munich Convention on the Grant of European Patents (EPC) of 5 October 1973
- Council Regulation 1768/1992 of 18 June 1992, on the supplementary protection certificate for medicinal products (there is also a 1996 similar Regulation on plant protection products)
- Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions
- Commission Proposal of 20 February 2002 for a Directive on the patentability of computer-implemented inventions (Common Position in the Council, May 2004)
- Revised Commission Proposal of 11 June 2003 for a Council Regulation on the Community patent

## EUROPEAN INSTRUMENTS IN THE FIELD OF TRADEMARKS AND DESIGN

- First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks
- Council Regulation 40/94 of 20 December 1993 on the Community trade mark
- Directive 98/71/EC of the European Parliament and of the Council of the legal protection of designs
- Council Regulation (EC) 6/2002 of 12 December 2001 on Community designs