

UPDATES FROM IPOS

NOVEMBER 2022

Dear readers,

We hope this update finds you well.


If you know of anyone that would like to be added to this mailing list (which deals primarily with IP/IT dispute resolution in Singapore), please drop us a note at ipos_hmd@ipos.gov.sg. IPOS also separately maintains another mailing list for circulars, legislative amendments and other related matters which you can join by contacting news@ipos.gov.sg. And, for any comments or feedback (or to draw our attention to any interesting news we might have missed), please email gabriel_ong@ipos.gov.sg.


Recent Court decisions

- [Senda International Capital Ltd v Kiri Industries Ltd](#) [2022] SGCA(I) 10

We continue our coverage on the DyStar litigation (which involved, among many other things, issues relating to patent valuation). The appellant in this case, Senda, had been ordered by the SICC to pay costs and disbursements of S\$8.1m to Kiri. In dismissing the appeal, the Court of Appeal addressed the relevant principles on the assessment of costs in the SICC.

- [V V Technology Pte Ltd v Twitter, Inc](#) [2022] SGHC 293

This was a notable decision involving Twitter's opposition to V V Technology's application to register  as a trade mark in Class 42. At first instance, IPOS allowed the opposition,

which was largely premised on Twitter's earlier rights in respect of its  trade mark registration. V V Technology appealed to the General Division of the High Court, which dismissed the appeal. The above link to the court's decision also includes a case summary. The case was also reported in the local media, including by The Straits Times, under the headline "Twitter wins S'pore court fight to stop start-up from registering similar bird logo": link [here](#).

Trade mark practitioners and academics would also be interested to note that the decisions engaged directly with the vexed issues and uncertainty surrounding the role of acquired distinctiveness in the marks-similarity comparison (see [80]-[118]). For convenience, the learned Judicial Commissioner's conclusions (at [119]) are set out below.



(a) First, I would suggest the consistent use of the following expressions when discussing the concept of distinctiveness at the marks-similarity inquiry: (a) inherent technical distinctiveness; (b) acquired technical distinctiveness; and (c) non-technical distinctiveness. The consistent use of these expressions would aid in the formulation of coherent arguments before decision-makers, as well as enhance the comprehensibility of our intellectual property law jurisprudence.

(b) Second, I would suggest a faithful return to Staywell and not consider “distinctiveness” as a “threshold” enquiry (even for reasons of convenience or ease of analysis), as this is in reality a separate step to the analysis that is not permitted by Staywell. Treating distinctiveness as integrated within the step-by-step approach would ensure that it is properly applied in the right context.

(c) Third, I hold that acquired technical distinctiveness should not be considered at the marks-similarity inquiry based on reasons of precedent, principle, and policy. The issue of acquired technical distinctiveness should be considered at the likelihood of confusion stage of the inquiry to preserve conceptual clarity.

- [Janesh s/o Rajkumar v Unknown Person \("CHEFPIERRE"\)](#) [2022] SGHC 264

In this widely reported case involving a Bored Ape Yacht Club (BAYC) non-fungible token (NFT), the General Division of the High Court granted an interim injunction to restrain the defendant (an unknown person with the Twitter handle chefpierre.eth and account name @chefpierre_) from dealing with the BAYC #2162 NFT. In arriving at its conclusion, the court held: (a) that the Singapore court was the appropriate court to hear the case; (b) that the Singapore court had jurisdiction notwithstanding that chefpierre.eth was an unknown person; and (c) that the BAYC NFT could give rise to property rights that can be protected by an injunction. (The story was reported by various media outlets, including the Straits Times [here](#).)

Recent IPOS decision

- [Tata Sons Private Limited v Tata's Natural Alchemy, LLC](#) [2022] SGIPOS 15

Tata Sons, part of the international TATA Group headquartered in India, was unsuccessful in its attempt to oppose an application to register the following TATA HARPER (and device)



mark: “ **TATA HARPER** ”, which was applied for in Class 3 in respect of cosmetics and related products.

- We are pleased to inform that Professor David Llewelyn’s decision (as IP Adjudicator) in “[PARTY LIKE GATSBY](#)” [2022] SGIPOS 8 has been reported in the Fleet Street Reports (“FSR”), which reports on significant IP cases from around the world. The FSR citation is [2022] FSR 25.



IP cases in the media

- “3 reasons why ex-employees should not take their employer’s data”, by Tan Ooi Boon, published in the Straits Times on 6 November 2022 (original article paywalled [here](#), republished on Singapore Law Watch [here](#).) This was a case comment regarding the case of *I-Admin (Singapore) Pte Ltd v Hong Ying Ting and ors* [2020] 1 SLR 1130; [2020] SGCA 32.
- “Cancelled T-Rex auction sparks calls for respect of copyright, more transparency on ‘real bones’”, by Shabana Begum, published in the Straits Times on 22 November 2022 [here](#).

Featured articles

- In conversation with Dr Dong Qiyao: We are happy to present the [sixth interview](#) in the series of interviews by the NUS Law Intellectual Property Students Association ("IPSA") with key players of the intellectual property ("IP") field in Singapore. The interview is with Dr Dong Qiyao, Representative of the World Intellectual Property Organization Arbitration and Mediation Center, Singapore Office. Readers familiar with the series would recall that the interviews seek to represent a diversity of views in the field of IP dispute resolution, and aim to explore and discuss the various strategies that Singapore is intending to employ in strengthening its position as an international dispute resolution hub for IP disputes. (Here are the links for the earlier interviews, in order of date of publication: [Justice Dedar Singh Gill](#); [Simon Thorley, KC](#); [Dr Stanley Lai, SC](#); [Jason Chan](#); and [Dr Michael Hwang, SC](#).)
- “AI and Copyright: The Death of Author?”- by Professor David Tan, published in the Law Gazette (November 2022), [here](#). For ease of reference, the article’s abstract / introductory paragraph is reproduced below.

“Is the postmodern condition of the death of the author in literary criticism fast becoming a reality in copyright law? Not yet. The limitless potential of artificial intelligence (AI) to analyse information, execute complex tasks, create and invent, has yet to be fully comprehended or harnessed. Unfortunately, the new Copyright Act 2021 does not directly address AI authorship. This commentary postulates that in the exceptional circumstances that AI arguably creates a work as a result of independent and autonomous deep learning, recognition of “authorship” must nonetheless be satisfied by the location of a nexus to a human individual.”

IPOS-EUIPO Boards of Appeal meeting

IPOS had a virtual meeting with the European Union Intellectual Property Office (EUIPO) Boards of Appeal on 20 October 2022. Both offices exchanged the latest developments in IP dispute resolution in their countries, and shared about recent activities, experiences and case law on topics of mutual interest. Among the topics discussed were the role of expert evidence and recent case law on Absolute and Relative grounds of registrability. (Link to LinkedIn post [here](#).)

10th Developments in IP Law Series

Come February 2023, we are bringing back our flagship programme for IP professionals – the 10th Development in Law Series closer to you in a physical setting.



Like its previous sell-out editions, this 10th edition returns with a line-up of prestigious speakers, comprising distinguished academics, experienced practitioners, and industry and public sector representatives. Look forward to speakers like Professor David Llewelyn (David Llewelyn & Co LLC), Justice James Mellor (High Court of England & Wales), Lord Justice Colin Birss (Court of Appeal of England and Wales), Adrian Tan (TSMP Law Corporation & Law Society of Singapore) and Professor David Tan (EW Barker Centre for Law & Business, NUS Law) to name a few.

The schedule (with corresponding sign-up links) is below.

[10th Developments in IP Law Series – Trade Marks/Passing Off](#)

02 February 2023 (Thursday) | 2:00pm - 5:40pm (GMT +8)

[10th Developments in IP Law Series – Patents](#)

09 February 2023 (Thursday) | 2:00pm - 5:30pm (GMT +8)

[10th Developments in IP Law Series – Breach of Confidence/Privacy and Data Protection](#)

16 February 2023 (Thursday) | 2:00pm - 5:30pm (GMT +8)

[10th Developments in IP Law Series – Copyright](#)

23 February 2023 (Thursday) | 2:00pm - 5:30pm (GMT +8)

This seminar is highly relevant for all lawyers, in-house counsels, patent agents, IP professionals and suitable for all other professionals interested in the topic(s).

