

licence.<sup>164</sup> There is a risk that the value of the patent will depend on who is the owner of the patent rather than taking into account solely the intrinsic value of the patent.<sup>165</sup> If Congress and the courts bend legal rules and patent value in order to discriminate between practising and non-practising patent holders, it could result in a deliberate distortion of the market, thereby adversely affecting competition and innovation. A fairy tale normally ends with the defeat of the troll. But, then again, you always know who the trolls are in fairy tales.

*Susanne Klein\**

## Search Engines and Copyright – An Analysis of the Belgian *Copiepresse* Decision<sup>1</sup> in Consideration of British and German Copyright Law

### A. Introduction

In recent years existing information technologies have been developed constantly and the internet has grown into a global medium of communication and advertising par excellence.<sup>2</sup> One sector that is highly influenced by the quick flow and exchange of information is the media world. The current easy transmission of sound, text, data and visual images creates new opportunities in these areas, and, as Laing says, we “are in the digital age”.<sup>3</sup> While

164 See Brief of Amicus Curiae Yahoo! Inc. in Support of the Petitioner, *EBay v. MercExchange* (“because wilful infringement carried a penalty of treble damages, many companies are wary of conducting exhaustive patent searches for fear of later having that fact used against them in an infringement action”); the problem has been termed “patent squatters”, where high-tech companies do not perform any patent clearance studies before releasing their products. While there are difficulties in conducting a minute or an extensive search as the products could be too complex, and there are too many patents involved in one product or because patents may be issued later, it does not excuse a complete lack of effort in making a patent clearance study which is portrayed in most cases. See Written Testimony of Hart Denkin, “Antitrust Modernization Commission”, Hearings Panel II: Patent Law Reform (2005).

165 Brief of Amici Curiae Qualcomm Incorp and Tesser Inc. in Support of Respondent, at 9, *EBay v. MercExchange*.

\* LL.M, University of Hannover.

1 *Copiepresse SCRL v. Google Inc.*, judgement of the CFI sitting in Brussels from February 13, 2007, published in English at: <http://www.copiepresse.be>. All website references were active on February 20, 2008.

2 SCHACK, “Urheberrechtliche Gestaltung von Webseiten unter Einsatz von Links und Frames”, 2001 MMR 9.

3 LAING, “Copyright in the age of mass digitisation”, 17(5) Ent. L.R. 133 (2006).