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Copyright Fee Change -

Effective August 1, 2009, there will be a new fee schedule at the Copyright Office. These new fees are based on the costs of providing services, and reflect savings from the implementation of electronic processing. The proposed fee for filing a copyright application online, using the new electronic Copyright Office known as eCO, remains \$35. The new fee for paper applications, however, is \$65, an increase of \$20. See details [here](#).

U.S. Copyright Office issues notice of proposed rulemaking -

The Copyright Office seeks public comment in connection with its proposal to amend the mandatory deposit requirement for electronic works only available online. If the amendment goes into effect, authors of such works would only be required to submit complete copies upon formal request by the Copyright Office. See article [here](#).

Batik motif artists in Indonesia not persuaded to register their one-of-a-kind designs -

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Just Like Riding a Bicycle: TTAB Affirms 2(e)(5) Functionality Refusal of Bicycle Spoke Design (precedential) -

In affirming the refusal of a product design mark for bicycle wheels, the Board noted that a product feature is functional and cannot serve as a trademark "if the feature is essential to the use or purpose of the article or if it affects the cost or quality of the article." *TrafFix Devices Inc. v. Marketing Displays Inc.*, 532 U.S. 23, 58 USPQ2d 1001, 1006 (2001).

To determine whether a product design is functional, the Board looked to the four factor test as set forth in *In re Morton-Norwich Products, Inc.*, 671 F.2d 1332, 213 USPQ 9 (CCPA 1982):

- (1) the existence of a utility patent that discloses the utilitarian advantages of the design;
- (2) the touting by the originator of the design in advertising material of the utilitarian advantages of the design;
- (3) facts showing the unavailability to competitors of alternative designs; and
- (4) facts indicating that the design results from a relatively simple or cheap method of manufacturing the product.

With respect to this test, the Board reiterated the Supreme Court decision in *TrafFix*, stating, "[a] utility patent is strong evidence that the features therein claimed are functional" and "[w]here the ... patent claimed the features in question, one who seeks to establish trade dress protection must carry the heavy burden of showing that the feature is not functional."

Based on the Board's review of the patents disclosed, the Board

In the city of Solo, Indonesia, local officials were not successful in their attempts to persuade the batik motif designers to register their works for copyright protection. According to a local tourism official, "[t]hey believe that each time they create something, it is not they who worked, but it is God who worked through their human body and soul...." For the full story click [here](#).

Bill Gates and Hurricanes -

Bill Gates and several other individuals have been listed as inventors on a patent application filed in January, 2008 regarding several methods for preventing hurricanes. The process uses vessels to mix warmer water from the surface of the ocean with colder water located deeper in the ocean to try and cool the surface of the water, as hurricanes are created from condensation created by heat. See article [here](#).

Obama Names IBM Executive to Head the USPTO -

President Barack Obama has nominated IBM executive David Kappos to head the U.S. Patent and Trademark Office. Kappos received his bachelor's degree in electrical and computer engineering from the University of California-Davis in 1983, and his JD from the University of California Berkeley in 1990. The story can be viewed [here](#).

found that each of the features which combine to produce the design of the applied-for mark (offset, tangentially laced, paired spokes and paired flange holes) are covered by one or more utility patents, and these features clearly affect the quality of Applicant's bicycle wheel.

"The applied-for design is dictated by the underlying functional aspects of the physical design of applicant's wheels, which clearly 'affect the quality' of applicant's bicycle wheels. The spokes in the wheel are laced that way because the wheel works better that way, notwithstanding that the resulting pattern [of the spokes] when viewed from a certain angle may also happen to have visual symmetry or appeal."

Considering the "strong weight" to be accorded to utility patent evidence under Traffix, the Board found the patents were sufficient to establish a prima facie case of functionality.

To paraphrase, once a product is covered by a utility patent, it will be an uphill battle for a trademark applicant to show that the feature is not functional for purposes of securing a trademark registration for the product design.

For more information click [here](#).

DealerTrack to Appeal District Court Ruling Under Bilski Test -

A summary judgment motion was granted in DealerTrack v. RouteOne LLC, et al. (in the Central District of CA). The court held that DealerTrack's patent (US 7,181,427) regarding an automated credit application processing system was invalid, under the Bilski standard recently articulated by the Federal Circuit. The Bilski decision is pending before the Supreme Court, and will be heard this fall. DealerTrack also plans to appeal the decision. The story can be viewed [here](#).

Smooth Criminal -

Looks like Michael Jackson had some help with his gravity defying lean while performing his 1987 hit song "Smooth Criminal." Jackson and two other inventors patented a system where a user engages his shoe with a hitch in the floor. The system allows for the user to lean forward at a 45 degree angle. This is how Jackson accomplished the 45 degree lean during his live performances. The entire story and the issued patent can be viewed [here](#).

Other IP News in the Music Industry -

[Artists seek fair pay for airplay](#)

[G.O.P. to Apologize to Jackson Brown](#)

PTO Error in Calculating Patent Terms -

The U.S. Patent and Trademark Office admitted that it has been incorrectly calculating patent term

adjustments for patents issuing from the national stage filings of international applications and plans to change its formula, a move that could yield another three to twelve months of exclusivity for patent holders. See details [here](#).

Copyright Controversy in Michigan -

Greenville, Michigan's city manager received a letter from the Artists Rights Society (New York-based organization that enforces copyrights on behalf of artists) demanding removal of Greenville's little mermaid statue or payment of a licensing fee of \$3,800. The letter claimed Greenville's little mermaid statue is an "unauthorized reproduction" of the original statue by Danish artist Edvard Eriksen. The original was installed in 1913 in Copenhagen's harbor as a tribute to the Danish author Hans Christian Andersen's "Little Mermaid". Mr. Eriksen died in 1959, and copyrights remain in force for 70 years after an artist's death. Click [here](#) for complete article.

Firm News -

Rader, Fishman & Grauer PLLC has been recognized by Lexis-Nexis and Martindale-Hubbell ("M-H") in **The 2009 Bar Register of Preeminent Lawyers**. The Register includes only those select law practices that have earned the highest M-H rating and have been designated by their colleagues as preeminent in their field.

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