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The Commercial Law of Intellectual Property

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The Commercial Law of Intellectual Property

by Peter A. Alces, David Frisch, Jay P. Kesan, and Harold F. See

Highlights of the 2015 Cumulative Supplement

Commercial legislation and intellectual property principles are experiencing dramatic adjustment as a result of technological, social, and legislative innovation. The Commercial Law of Intellectual Property provides comprehensive, in-depth analysis of the intersection of commercial law and intellectual property rights.

Now the 2015 Cumulative Supplement brings you the latest developments on a number of critical topics, including:

- New sections on “definiteness,” clarifying the definiteness requirement of Section 112(b); and on patent malpractice case jurisdiction, discussing the Gunn v. Minton case, where the Supreme Court drastically cut back on the federal court’s ability to hear patent malpractice cases. See §§ 2.2.8 and 2.7.3.

- New section entitled “Abandonment of Right to Sue,” discussing the Supreme Court’s ruling that “voluntary cessation” of trademark enforcement destroys jurisdiction. See § 6.9.5.

- Supreme Court decision analyzing the Section 106(4) right to perform a copyrighted work publicly and Section 101 right to transmit a copyrighted work to the public. See § 4.2.2.

• A federal district court case analyzing whether the limitation of liability clause excluding consequential damages, contained in a contract for the purchase of software, failed of its essential purpose and whether the clause was unconscionable. See § 19.4.

• Federal district court cases describing the meaning of “merchant” under N.Y.U.C.C. § 2-201 and dealing with “course of dealing” with respect to conduct of the parties in other transactions. See §§ 11.2 and 11.2.2.3.

• Review of whether U.C.C. § 2-609 allows a party to request adequate assurance when “reasonable grounds for insecurity arise with respect to the performance.” See § 16.2.1.

• Discussion of the role of commercial standards in determining whether one meets the requirements of a “buyer in the ordinary course.” See § 15.3.

• Examination of whether a seller who resells the goods in good faith and in a commercially reasonable manner can nevertheless opt for market price damages when it will lead to a higher damage award. See § 18.2.3.

• A California appellate court decision examining how far the warranty against a rightful claim of infringement extends. See § 13.2.2.

The Table of Cases and Table of Statutes have been updated for this supplement.

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