The shape of things to come – the next 18 months in trademarks

The trademark landscape is consistently being shaped by political movers and shakers, consumer trends, industry organisations and wider influences. WTR gazes into its crystal ball to see who and what are likely to transform the trademark environment over the next 18 months.

Drawing up a list of the most influential people in the trademark world is not the hardest task – the difficulty comes in trying to pare it down to a top 10 or 20. It is even trickier to predict who or what will be future influencers – from individuals and institutions to events and market trends. While WTR profiles the leading corporate trademark teams annually (see page 41) and the WTR 1000 research project unveils the leading private practitioners, for this issue of the magazine we approached a number of industry experts to help us identify the (non-trademark counsel and judicial) individuals, institutions and possible trends and movements that will shape the trademark ecosystem over the next 18 months. Some names will be expected, others may surprise you – and we will have to wait and see whether they really do end up shaping our industry.

Trends and developments to watch: A multi-dimensional challenge

The rise of a new technology is often the cause of much excitement among consumers and brand owners. However, while the public has greeted three-dimensional (3D) printing enthusiastically, brand owners are viewing the development with trepidation. This innovative method of printing enables 3D products to be created from a simple two-dimensional blueprint. Given the necessary materials, it will theoretically be possible to download and produce almost anything in the comfort of your own home. While it is highly unlikely that the technology required to create complex, multi-material products will be widely available anytime soon – let alone found in your average home – the prospect of 3D printing kiosks is very real, and brand owners are worried about the threat of trademark infringement and counterfeiting. After all, it does not take a great leap of imagination to envisage how a counterfeiter could download an image of, for example, a popular children’s toy, advertise its wares online as the genuine article, then print and ship the toy to order. With no need for factories to manufacture and large freights to transport the counterfeits, even brand owners would be hard pushed to spot such operations. In 2012 file-sharing site Pirate Bay lighted on this new possibility and began publishing blueprints compatible with 3D printers alongside the copyrighted material it already offered its members. Websites like this are bound to cause a few sleepless nights for brand owners, but only time will tell whether the uptake of this technology – and, more importantly, its misuse to infringe IP rights – will be as significant as some fear.

High-tech specs and the pace of technological innovation

Imagine a world in which advertising was tailored so precisely to your needs that it could not only identify your favourite products, but direct you to the nearest place to buy them without so much as the touch of a button. It may sound like something from a Kubrick film, but if Google has anything to do with it, this will be our reality – albeit an augmented one – any day now. Google Glass is the innovation that will allow users to respond to emails, confirm appointments, browse the web and more, simply by sporting a pair of voice-activated spectacles. Never one to be outdone in this sector, Apple is rumoured to be planning the iWatch – a curved glass creation that is set, unsurprisingly, to be far more than a simple timepiece. While the details are still vague, it is believed that the iWatch would have all the functionality of the iPhone with none of the encumbrance of having to be carried around.

The rate at which technology in the consumer electronics space is moving is incredible, and the speed at which the public become inseparable from these gadgets is equally rapid. This has led to the brand owners behind such innovations attaining positions of considerable influence. “Russell Pangborn at Microsoft is now secretary of INTA,” states Peter Sloane of Leason Ellis. “Russ and his counterparts at electronics companies like Apple, Samsung and Huawei will likely have outsized influence in the years to come.”
One reason for this authority is that brand owners are only too aware of the power that these high-tech giants will exert in the age of augmented reality. The whole premise of Google Glass, for example, is that the specs are able to identify precisely where you are and provide you with information relevant to your location – and this information could, of course, include ads. So, if you are out and about and searching for ‘coffee’, you might be directed to the closest coffee shop. With such tailored offerings via geolocation services comes a policing burden – if you do not have trademark counsel on the ground prowling for these ads in all four corners of the globe, how can you ever spot them in the first place? The Internet made the world seem like a much smaller place; this new wave of augmented reality could – at least for brand owners – make it feel vast once again.

**Boldly going into unchartered space**

The likely impact of new generic top-level domains (gTLDs) is discussed elsewhere (see page 36), but the significance for trademark practitioners over the next 18 months means that it would be remiss not to touch on it here. There are still a number of unknowns, not least how quickly consumers will migrate to new domains rather than continue to default to ‘.com’. The change will not occur overnight, but infringers are likely to be slightly quicker off the mark. Online enforcement has been an increasing preoccupation for brand owners over the last decade and an expansion in the overarching environment can only add to the burden. As Dennis S Prahl of Ladas and Parry warns: “The introduction of the new gTLDs should certainly put trademarks and domain names in the forefront of every brand owner’s mind as those who are taking out new ‘brand’ TLDs struggle with how to use them for branding and marketing and, more importantly, all trademark owners struggle with how best to protect their marks in the Trademark Clearinghouse, the sunrise periods and dispute mechanisms as hundreds of new venues for cybersquatting open up.”

**The creep of plain packaging rules**

On December 1 2012 Australia became the first country to enforce plain packaging with respect to tobacco products, with other countries signalling their intent to follow suit. Trademark groups have been active in lobbying against the move, citing it as an attack on trademark rights. Importantly, they have also warned that such legislation could creep into other sectors. Silverberg, Goldman & Bikoff’s James Bikoff states: “With respect to tobacco products, Thailand and Singapore are expected to follow suit shortly with even stricter requirements, and New Zealand and India are also drafting laws to this end. For the moment, the plain packaging requirements have been limited to the tobacco industry, but it is anticipated that other industries producing potentially ‘harmful’ consumer products may also adopt similar regulations, including the pharmaceutical industry and food and beverage manufacturers. Thus, we believe that governments, legislatures and their regulatory bodies worldwide will play a major role in what may arguably be considered an erosion of IP rights of brand owners.” While regarded by many as a ‘tobacco issue’, this is clearly a trend that other industries should be watching.

**The anti-IP groundswell**

For many years the ire of anti-IP protestors has been directed towards patents, and specifically big pharma. While there is still a strong contingent focusing their attention on patent rights, over the past couple of years anti-IP sentiment has had a significant impact on the trademark community. Last year saw a Europe-wide day of protests against the Anti-counterfeiting Trade Agreement (ACTA) and subsequent lobbying of the European Parliament resulted in it being dropped. Across the Atlantic, the PROTECT IP Act and Stop Online Piracy Act (SOPA) – two pieces of US legislation introduced with the aim of curtailing online infringements – were both abandoned following outcry not only from the public, but also from internet behemoths such as Google and Wikipedia. In each of these instances brand and copyright owners were constructed as greedy big business, and the governments looking to pass the bills cast as, at best, ill-advised and, at worst, nothing more than the corporates’ puppets. Riding on the crest of this anti-IP wave are a number of organisations and bodies, including the Pirate Party, which supported the anti-ACTA protests in Europe and whose manifesto is based in large part on the radical reform – some would say abandonment – of IP laws. The collection of political parties operating under the Pirate Party flag sits at over 15, and its factions are spread around
the globe. Europe seems to have been most susceptible to the anti-IP message so far, with both Sweden and Germany electing members of the Pirate Party to Parliament. However, these elections were back in 2009 and although the party has continued to make headlines since then, it is still a long way off winning national elections. Sioane suggests that the real threat is to be found not in the real world of voters and polls, but online: “Apart from domain name and internet issues like SOPA, I do not see any real anti-IP groundswell. On the other hand, we should not underestimate the importance of anti-IP sentiment in the increasingly important digital space.” As that space continues to grow, and the next generation of consumers, unaccustomed to money exchanging hands for a CD (or, whisper it, a record) eclipses the current media buyers, indignant at having to part with cash for a seemingly ‘free’ music or film experience will also no doubt increase in volume. It is down to the IP community to make the pro-IP message heard if there is to be any chance of quelling this anti-IP crusade.

Don’t just say it, prove it

Elsewhere, the US Immigration and Customs Enforcement (ICE) has been singled out as an organisation to watch. It should not be the only one, as governments and their customs enforcement agencies continue to work towards identifying and intercepting shipments of counterfeit goods. However, such bodies need legislative tools to help them and, as shown by the debates on PROTECT IP, SOPA and ACTA, the political will to create these only goes so far. The protests – both physical and online – which detailed these legislative packages were rooted in part in both public anti-IP sentiment (see above) and suspicion over the narrative that big brands were communicating. Anti-counterfeiting campaigns have long linked counterfeits to organised crime and terrorist groups, but this has not yet proved compelling to consumers – one reason being the lack of evidence (or rather the publication of such evidence) linking the two. Prahl comments: “I would hope that the message that trademark counterfeiting is strongly linked to terrorist and organised crime activities will gain traction in the public consciousness, but until al Qaeda is actually linked to fake handbags or watches in some raid, the media may not catch on to this story.” Efforts are underway to change the perception of consumers over counterfeit goods – by both brands and associations, such as the International Trademark Association’s (INTA) Unreal campaign. However, well-publicised evidence linking counterfeit goods directly to terrorism and organised crime helps enormously in shaping media coverage and public attitudes towards fake goods – and influences how the debate over online piracy will unfold in the coming years. Efforts to disseminate such evidence without compromising investigations and sources could have a big impact on the anti-counterfeiting landscape.

A bullying backlash

Trademark bullying has been a topic of much debate and little resolution over the last couple of years. However, the issue could be set to creep into the public consciousness and prove a setback for those seeking to legitimately enforce their rights. Prahl certainly believes this is the case: “I was really struck by the Samsung commercial during the Super Bowl, which went to great comic lengths about how they could not use the SUPER BOWL name or the names of the teams because they are NFL trademarks, and it made me wonder – are the excesses of some brand owners starting to seep into the minds of the common consumer?” If so, expect the trademark bullying issue to push its way up the agenda.

To be fair, it is something that has long been debated in trademark circles. Does bullying exist? When does fair enforcement equate to overreach? In 2011 the US Department of Commerce issued its Report to Congress on Litigation Tactics and Federal Government Services to Protect Trademarks and Prevent Counterfeiting. Since then, despite setting up a public meeting to discuss the potential role that IP associations can play in providing legal education programmes on trademark policing, there has been little action. In the meantime, as outlined in the last issue of WTR, the debate has continued and for every instance of positive enforcement (eg, the Jack Daniels example, more on which can be found on page 41), there are complaints about overreach. While anti-IP sentiment has so far been largely restricted to online counterfeiting, ‘trademark bullying’ could prove to be the next great debate.

Free trademark searches and the push for innovation

In what is potentially a win-win situation for trademark counsel, moves to overhaul, standardise and offer free access to trademark databases could reap real dividends for practitioners. In February the World Intellectual Property Organisation (WIPO) announced the expansion of its public database of trademark and brand information, with the six national collections of trademark records taking the available number of records from 2.2 million to 10.9 million. The Office for Harmonisation in the Internal Market’s (OHIM) TMview, meanwhile, boasts (at time of writing) access to 9.8 million marks from 29 offices. OHIM’s cooperation projects continue apace and the prospect of “all-encompassing, fast and powerful search engines for the free use of the public within the context of cooperation between the agency and the offices of the member states” is embedded into proposals to overhaul Europe’s trademark framework. In some respects, the availability of free trademark search data can be seen as a challenge to existing service provider offerings in this area. An alternative view is that free data will lead to greater innovation among service providers in terms of the tailored reports and services they offer. Both have upsides for trademark counsel.

The competition for customers

In issue 31 of WTR, our cover story focused on trademark filing data at the US Patent and Trademark Office (USPTO) and, in particular, the rapid rise of web-based trademark services. Offered by such companies as Trademarkia and the Trademark Company, these offerings compete with the traditional law firm model by offering lower-cost filing services, alongside other products. Trademarkia in particular has been the centre of some heated debate in law firm
The non-IP organisations set to shape the future of trademark practice

European Commission is set to drive trademarks shake-up

A no-brainer perhaps, but with the (recently published) proposed amendments to the Community Trademark Regulation (207/2009) and the EU Trademarks Directive, as well as an overhaul of the filing fees regime, Europe could soon see significant changes to its trademark framework. While the European Commission, which commissioned the Max Planck Institute to study the functionality of the European trademark system and get the ball rolling on reform, is singled out, it will not be the only actor involved in moving the legislative package forward. As Bardehle Pagenberg’s Alexander von Muhlenhahl notes, the European Council and Parliament, as well as national offices and OHIM, will play a significant role, while “at the NGO level we should expect BusinessEurope, INTA, ECTA and MARQUES to be major players”. However, given that the commission took such an active role in the development of and ratification process for the unitary patent, it would not be surprising to see it adopt the same proactive stance to these latest trademark proposals.

ASEAN Economic Community embraces harmonisation

Over the next 18 months, the Association of Southeast Asian Nations (ASEAN) Economic Community (AEC) will edge closer to reality.

ASEAN was founded in 1967 and currently boasts 10 members (Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam), with Timor Leste’s application under consideration. The establishment of the AEC is expected in 2015 and with it the prospect of a community trademark scheme. While there are no current plans for such a move, the creation of a common economic zone – which would facilitate the free movement of goods and services – means that it is not inconceivable that Europe’s Community trademark model could be adapted, or at least its driving ethos of harmonisation. At present there is a disparity among the respective ASEAN member states with regard to the treatment of trademarks, although its IP Rights Action Plan aims to promote cooperation. At the very least, one of its goals is for all members to have acceded to the Madrid Protocol by 2015. The requirements of this alone mean that the AEC will play a key role in developing trademark processes across the region.

A tale of three countries in the Eurasian Economic Commission

The Eurasian Economic Commission is a relatively new supranational body, which was formed on January 1 2012 to oversee processes between Belarus, Kazakhstan and Russia within the Customs Union and the Single Economic Space (SES). The commission has already proposed an Agreement on Trademarks, Service Marks and Appellations of Origin in the Territory of the Single Economic Space between the Customs Union members. The draft agreement, which will enter into force once it has been ratified by all members, aims to harmonise IP rights protection across the three countries with the creation of an ‘SES trademark’, which will span the three jurisdictions and coexist with national rights. Such a move would have a significant impact on the trademark landscape across the three jurisdictions, and for those companies operating within.

ICE provides a chilly reception for counterfeiters

While it could be argued that ICE has a foot firmly in the IP camp, it is not wholly trademark-focused. However, it has been playing an increasingly high-profile role in the fight against counterfeiting – a trend that is likely to continue.

One practitioner told WTR that “while I do not see much new activity with the Customs Border Protection side as far as recordation is concerned, ICE is certainly stepping up its enforcement efforts”. This is evidenced in the almost-weekly issue of press releases proclaiming the latest victory or seizure – for example, ICE’s Operation Red Zone, which took place over the Super Bowl period, saw the seizure of goods with a manufacturer’s suggested retail price of more than $17.3 million.

ICE leads the activities of the National Intellectual Property Rights Coordination Centre and has been behind the seizure of hundreds of sites found to be infringing IP rights – the domain names are usually redirected to display a seizure notice (eg. in the first week of October 2012, ICE seized 686 websites that were selling

A boutique revolution?

Over the past year a number of new trademark firms have been established, as law firm partners look to establish their own specialist firms. From New Zealand (Catalyst Intellectual Property) to Argentina (O’Connor Power), the United States (Advitam IP) to Europe (Balder IP, Bear and Wolf), legal specialists have struck out. While a certain degree of activity is inevitable in any sector, this is a trend that could gather steam. Nicholas Richardson, research manager across the WTR 1000 and IAM Patent 1000 projects, observes: “In the patent litigation arena we’ve seen top-name partners from major firms setting up lean, highly specialised shops, and I suspect that this will be mirrored on the trademark side of the equation; sophisticated clients are demanding a more personal service alongside tailored solutions to increasingly complex brand protection and enforcement problems. At the same time, the biggest firms are likely to get bigger, with growth fuelled by expansion into emerging markets; their ability to offer one-stop shopping to global brands continues to set them apart. Those in the middle may be left feeling the squeeze.”

One private practitioner told WTR: “General practice firms are no longer cost competitive when it comes to trademark prosecution and I do anticipate that more boutiques will splinter off or otherwise open.” Should such activity gather pace, it could have a significant impact for clients as they push for specialist services.

The future is in the cloud

We are now living in the age of the cloud. When it comes to personal computing, photos, documents, contacts, media files – you name it – are all regularly being stored and shared remotely. In the commercial world, businesses are rapidly adopting the cheap and space-saving
counterfeit pharmaceuticals as part of an international operation). Its efforts show no sign of abating and, in coalition with domestic and international partners, ICE is likely to ramp up its efforts to disrupt counterfeit trade.

**ICANN’s online revolution**

Away from the political world, much has been written about the likely impact of new gTLDs on trademark practitioners – not least on the pages of WTR and online in WTR Daily. Since the 2008 announcement that the board of the Internet Corporation for Assigned Names and Numbers (ICANN) had approved the expansion of the online space via new gTLDs, WTR has tracked the programme’s progress and reported on the potential impact for trademark owners – and there has been much to report. While several deadlines have passed, the fight for trademark protection mechanisms has continued apace – through the formation and subsequent recommendations of the Implementation Recommendation Team, the efforts of the IP Constituency, numerous public comment periods and the realisation of the Trademark Clearinghouse. With gTLD delegations due to commence imminently, the new online space is close. As Bikoff notes: “ICANN will be instrumental over the course of the next 18 months in the delegation of as many as 1,000 new gTLDs; some estimates place the number at 20 per week from mid-2013 forward. As a result, brand owners should expect a substantial increase in cybersquatting despite the rights protection mechanisms that have been adopted by ICANN.” There is much at stake and the lessons of the current programme will inform future application windows – as such developments at ICANN will have a clear impact on the budgets and strategies of trademark counsel over the next 18 months.

**Creating a consistent message across Portuguese-speaking nations**

The concept of a Lusophone trademark registration system is not a new one, with Portuguese-speaking countries long boasting a strong presence in WIPO and facilitating increased cooperation. In December 2012 a meeting to discuss the creation of a Lusophone trademark was held in Lisbon, with the director of the Angolan Institute of Industrial Property subsequently detailing plans for a system designed to allow quicker and easier trademark protection amongst the Community of Portuguese Language Countries (Angola, Brazil, Cape Verde, East Timor, Guinea-Bissau, Mozambique, Portugal and São Tomé and Príncipe). Between them, the countries are home to 240 million people. Should Lusophone trademarks become a reality, brand owners’ access to their respective markets for goods and services will be made considerably easier.

offerings of cloud computing. However, while the cloud offers numerous possibilities for brand owners, like any emerging market it also poses threats. As Erin Hennessy and Matt Schneller explain in the article on page 97, these threats may not be new ones, but they must be acknowledged and policed appropriately.

**Patent attacks in the pharmaceutical sector**

One sector where trademarks will be central to success in the coming years is the pharmaceutical industry. Nicholas Bolter of Edwards Wildman told WTR that “as a number of critical patents for biotech and pharmaceuticals face a patent cliff in developed economies, trademark and trade dress will become ever more important in protecting goodwill for consumer-facing products.” A similar challenge will be felt in countries where there are moves towards the compulsory
licensing of pharmaceuticals. In both cases the erosion of patent protection will lead to an increased focus on brands to allow market differentiation and competitive advantage. Here, then, is a positive trend for trademarks, emphasising the power that a mark can bestow.

The rise of Chinese brands
For many years China has been the focus of much concern from rights holders. The region has gained notoriety as a hub for counterfeiting and trademark infringement, and there are seemingly no lengths to which perpetrators will not go to convince consumers to buy their wares. Stores have sprung up across the country replicating big brands so closely that in some cases, even the employees remain unaware that they are working for a copycat. While brand protection issues look set to continue being a hazard for rights holders operating in China, a new and legitimate threat is emerging from the region: competition. The value of home-grown brands is rising rapidly in China. These local brand owners are proving to be worthy contenders for their international counterparts, offering rival goods at modest prices and keenly attuned to the needs and desires of Chinese consumers. As the wealthy middle class continues its rapid expansion – and China’s president commits to doubling gross domestic product between 2010 and 2020 – it is evident to brand owners both at home and abroad that China has a hugely lucrative market just waiting to be tapped.

Although local brands are successfully competing with their international rivals on price and availability, they are still falling behind on desirability. There persists among Chinese consumers a widely held belief that foreign brands are higher quality and hold greater prestige. However, some brands are beginning to buck this trend. In the third financial quarter of 2012, despite a rough preceding decade, Chinese computer producer Lenovo was declared the world’s biggest seller of personal computers. The company has invested heavily in branding and recently announced that it would be reorganising its products under two distinct brands – one for more price-conscious consumers, the other in what it hopes will be competition for Apple. While as yet there may not be many other Chinese brands making the global impact of this computer giant, if others take a leaf out of Lenovo’s book and adopt a clear brand strategy, it is surely only a matter of time. Such competition will also positively impact on China’s own IP system. Edward Wildman’s John Olsen observes: “As Chinese companies emerge to become regional and world competitors, the domestic IP system becomes more adept at rationalising IP protection to favour all players. What this will mean in practice is that China is becoming more respectful of goodwill and less provincially legalistic.”
National trademark offices to watch

All change at the USPTO?
Again we start with a no-brainer – the USPTO is the one agency likely to feature on any list of offices to watch. However, this year one of the main reasons to watch the organisation is to ascertain what priorities a new director will bring. With David Kappos having left, the industry awaits the announcement of a permanent successor. Teresa Stanek Rea is acting director and may well assume the mantle on a permanent basis (or may even have done so by the time you are reading this). Kappos prioritised patent operations and legislation. Should his successor apply a similar level of enthusiasm to trademark operations, any changes would be keenly felt. Alongside the director, as Sloane notes, “Deborah Cohn, commissioner for trademarks in the US, remains one to watch”.

BOIP leads the debate
While the Benelux Office of Intellectual Property (BOIP) makes the list more for its past activity than for knowledge of what the future holds, it would be no surprise to find it at the forefront of European trademark matters over the coming 18 months. It has long been an active player on the continent’s IP scene and was at the centre of one of the biggest issues in European trademark circles over the past two years – that of genuine use of a mark in the European Union. The essential question at the heart of what became known as the ONEL case was whether the use of a Community trademark in one member state automatically constitutes use in the Community.

As explained by BOIP’s Diter Wuytens: “BOIP, both in its ONEL decision and in subsequent opposition decisions, underlined that national borders within the Community should play no role, and that account should be taken of all relevant circumstances, including the market of the goods and services.” The European Court of Justice subsequently confirmed that “all facts and circumstances” should be accounted for, ruling out a de minimis rule and suggesting that the bar for showing genuine use within the Community will be higher than that for showing the same in a specific member state. The decision has been discussed at length elsewhere, but BOIP’s high-profile role in a debate that involved even the European commissioner for the internal market and services demonstrates its willingness to help address issues at the heart of the European trademark scene.

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The political movers and shakers

**Can Harper lead Canada to the forefront of anti-counterfeiting?**
The 42nd Canadian federal election is tentatively scheduled for October 19 2015, theoretically giving Conservative party leader Stephen Harper more than two years to make a further impact on the country's IP scene.

Last year the Canadian Intellectual Property Council noted that "Canada lags in terms of the protection of IP rights, a trend that has resulted in negative economic impacts and poses a threat to the health and safety of Canadian consumers. The adoption of stronger protection for IP rights in Canada is essential to protect Canadian consumers from the dangers of counterfeit goods." Central to such a shift is political drive and, with IP rights firmly on the agenda, Harper is set to act as a force for positive change – in March the Combating Counterfeit Products Act was introduced to address the counterfeit issue. While, some commentators are already comparing it to ACTA, the proposed legislation could have a significant impact on the landscape – in Canada and beyond.

**No rest for the IP non-caped crusader**
US Senator Patrick Leahy has been at the forefront of debates on ICANN’s Trademark Clearinghouse proposals, trademark bullying consultations, anti-counterfeiting legislation and the PROTECT IP and SOPA online piracy proposals, and has even been known to fight crime the Batman way (his cameo appearance in The Dark Knight Rises may not have been IP related, but he was clearly on the side of the good guys). It is hard to think of another US politician who has been so prominent in trademark-related issues. With online piracy still a live issue, Leahy can be expected to continue his efforts. A lead sponsor of legislation and the PROTECT IP Act was introduced to address the counterfeit issue. While, some commentators are already comparing it to ACTA, the proposed legislation could have a significant impact on the landscape – in Canada and beyond.

**Getting on with the job**
In December 2009 the US Senate confirmed the nomination of Victoria Espinel as the first US IP enforcement coordinator. She quickly set about creating an effective national IP strategy and June 2010 saw the publication of the Joint Strategic Plan on Intellectual Property Enforcement, which took on the colossal task of coordinating IP enforcement across US government departments. Since then, the administration’s Annual Report on IP Enforcement (the 2013 version of which was not yet issued at time of writing) has outlined a number of its achievements, which include involving the private sector in education efforts over illegal online pharmacies, significantly increasing in Customs and Border Protection and ICE seizures, and identifying the industries that produce intellectual property most intensively in a bid to demonstrate its economic importance. Other projects include encouraging the expansion of voluntary best practices for online advertising to cut off revenue to websites distributing counterfeit and pirated goods, and enhancing capacity building. While a relatively quiet voice in the online piracy debate that raged in 2012, Espinel will continue to push the enforcement agenda and in this way reshape the framework in which brand owners operate.

**The ex-publisher Pirate**
Anna Troberg, leader of Sweden’s Pirate Party, was not always an advocate of looser copyright and patent laws. In fact, before entering politics it was precisely these IP laws that enabled her to make a living as the head of the Swedish branch of a publishing house. So just how did such an ideological about-face take place? Having not only managed the Swedish publication of authors she much admired, including Jeanette Winterson, Troberg became a published author herself and was united with the rest of the publishing industry in the mid to late-2000s in combating online piracy. However, it was the response to a blog she posted that instigated the change of heart. "The pirates turned out to be good people," explains Troberg on her website. "When I took the time to actually listen to them, they seemed to be the only ones who had a reasonable idea of how to create a thriving and positive cultural landscape for the future."

The agenda of the party is not based solely on the reform of IP laws; it also advocates greater privacy rights both online and in the real world, and calls for political transparency. However, it is most infamous for its anti-IP viewpoint. Having been convinced of the party's virtues, Troberg joined and was made deputy leader in 2009. It was at this time that the Pirate Party peaked in popularity and reportedly became Sweden’s third largest political party. In the 2009 elections the party received more than 7% of the total Swedish vote and gained two seats at the European Parliament. In January 2011, following the announcement that Rick Falkvinge was to step down, Troberg took over the helm as leader.

While numbers dropped off in 2010 and 2011, reports from November of last year stated that the Pirate Party had doubled its membership in the preceding few weeks. This success is no doubt due in part to Troberg and her commitment to spreading the party message outside techie circles.

While the party largely comprises computer programmers, Troberg is an adept communicator and is intent on making the party's message accessible to all. Combine this skill and determination with the kudos – and reason – that comes from having experienced both sides of the debate first-hand and you get a formidable adversary for the IP world. It is not yet clear whether the Pirate Party will be able to replicate its success of 2009, but with Troberg at the helm it certainly should not be underestimated.
Putting intellectual property on Africa’s development agenda

Opening a two-day conference in Dar es Salaam, WIPO Director General Francis Gurry pointed to Africa’s “great tradition of innovation and creativity” and pledged assistance for countries developing national innovation strategies. The March conference was organised by WIPO and the Japan Patent Office in close cooperation with the government of the United Republic of Tanzania, the latter seeking to ensure that IP issues are embedded in fundamental development strategies.

Speaking at the event, Tanzanian President Jakaya Mrisho Kikwete noted that proper use of intellectual property can contribute to economic development and the eradication of poverty in African countries, arguing: “IP policies should be integrated with development policies.” In this regard he appealed to development partners “to explore the possibilities of increasing support to African countries in IP issues”, while stressing that “IP issues should be regarded as development issues. They should not be dealt with in isolation”.

Days later, Tanzania’s president participated in a meeting involving 20 African ministers, further developing the case for the role of intellectual property in promoting socio-economic growth and the development of nations. If Kikwete continues his efforts to promote the economic benefits of intellectual property, while pushing for development assistance and policies to make intellectual property a central tenant, he could play a major role in strengthening IP protection across Africa.

Creating an international voice in Chinese policy making

When compiling this list of influencers, WTR took the decision to exclude trademark counsel and judges. Jack Chang would thus not qualify on the basis of his IP work for General Electric. However, as chairman of China’s Quality Brands Protection Committee (QBPC), he is hard to exclude.

Boasting 213 members at time of writing, QBPC’s constituents read like a ‘who’s who’ of global brands, including names such as Apple, BP, General Motors, Gucci, Mattel, Microsoft, Pfizer, Samsung, Sony and Toyota. As chairman, Chang spearheads the association’s activities, which range from organising workshops for law enforcement officers to hosting an annual awards ceremony to recognise government agencies that have excelled in IP enforcement, to lobbying for legislative change. Importantly, Chang also highlights the committee’s importance in helping to transform the understanding and outlook of foreign investor companies looking to do business in China. As the country further develops customs capacity and implements legal reform, Chang’s continued contribution on behalf of international brands should not be underestimated.

Driving change in Europe

Europe is on the cusp of making significant revisions to its trademark framework (covered on page 4). While this will be a multi-stakeholder process, the input of Kerstin Jorna, director of the European Commission’s IP directorate could be critical. Jorna’s predecessor Margot Fröhlinger (now at the European Patent Office) was an active force for change during the long and arduous (and ongoing) efforts to establish a European patent. Should Jorna adopt a similar approach, she could prove the driving force behind legislative change.

IP organisations look ahead

Study time as OHIM places a value on intellectual property

As featured elsewhere (see page 4) the European Commission has now published its proposals to amend and update the Community Trademark Regulation and the Trademarks Directive. As such, OHIM – under the leadership of Antonio Campinos – will have a major role to play in the evolution of European practice. However, even without this development, OHIM’s activities will still be shaping user experience and practice over the next 18 months.

In addition to continuing its drive for ISO 9001 certification, 2013 will see the launch of a new website (featuring e-filing options and a searchable case law database, among other offerings) and the definition of a first convergence project for designs.

Importantly, the EU Observatory on Infringements of IP Rights will launch two major studies. The organisation told WTR: “One – our IP Value study, carried out in conjunction with the European Patent Office – will give us an accurate picture of how much IP is worth to the EU economy, how many jobs it provides and what its contribution is to EU GDP. Our second study is based on public awareness. It is being carried out across all 27 EU member states plus Croatia, and seeks to provide an accurate picture of what EU citizens think about IP. Both these studies will give us valuable data with which to measure our progress in shaping new narratives around intellectual property in the EU.”

Elsewhere, its work continues with the TM5 (the USPTO, China’s State Administration for Industry and Commerce, the Japan Patent Office, the Korean IP Office and OHIM), and projects are underway in Asia “through the EU’s ECAP III programme”. Finally, the prospect of an overhauled European trademark system is not the only construction project that OHIM will be involved in: “Here in Alicante, we’re looking forward to the finalisation of our new building programme. Construction work began on the site in January 2013, and when our new building is finished we’ll have all our staff under one roof, in a modern and sustainable building environment. This project will actually save us money in the long run, as once we all move into the new building, we won’t be paying the rent on our second building, where many of our staff work.”
INTA: the problem solver

These are turbulent times for trademarks and the people who manage them. The new gTLD system raises additional concerns for rights holders looking to protect their brands online; the defeat of ACTA, PROTECT IP and SOPA indicate that anti-IP sentiment continues to grow, while counterfeit goods continue to flood the marketplace. In light of these unsettling circumstances, INTA sees its role in the coming year largely as that of a problem solver. The organisation told WTR: “INTA’s focus is on expanding its presence around the globe to create new avenues for influence and drawing on the expertise of its members to find workable solutions to the challenges ahead.”

The organisation’s global expansion includes delegations visiting Thailand, China, Korea, Indonesia and Singapore to promote the need for trademark protection and enforcement. Looking ahead to 2014, the INTA annual meeting will be held for the first time in its 135-year history in Asia. However, INTA is well aware that it is not only international territories that need exploring, but also the online world. Therefore, significant resources will be devoted to addressing internet issues. “The expansion of gTLDs means brand owners must adapt their monitoring and enforcement efforts to this new online environment,” WTR has been told. “INTA will work closely with ICANN to enshrine the stronger rights protections that will enable them to do so.” As well as working with outside bodies, INTA has developed its own online initiative, which it plans to develop further in the coming year. Launched in 2012, the Unreal campaign uses social media to educate teenagers about the value of IP rights and the dangers of counterfeits. Having teamed up with non-profit organisation StreetLaw, this year INTA will be taking Unreal to US schools. “The pilot programme has been well-received”, WTR is told. “The Association will use the coming months to deepen its impact and plan for international expansion.”

MARQUES: the brand owners’ European watchdog

The self-claimed “trusted voice for brand owners”, MARQUES’ aims to monitor relevant brand-related issues and trends across Europe. One such trend that it intends to watch closely over the coming 18 months began on the other side of the globe in Australia with the plain packaging legislation. “Such legislation strips the brand owner of the ability to differentiate its brand and product from those of its competitors and is anathema to brand ownership, competition and the ability to make informed choices,” MARQUES has told WTR. ‘Plain packaging is a trend which requires MARQUES’ close attention on behalf of brand owners to ensure that any government policy and legislation maintain a proper balance between health and safety issues and brand integrity, including the investment in and value attributed to brands.”

Another area in which MARQUES is keen to preserve brand integrity and value is in the online space. The pervasiveness of social media, and the illegitimate use of tools such as adwords and keywords, make the Internet notoriously difficult for brand owners to police. A careful balance that needs to be struck between restraining the free flow of information and free speech. However, MARQUES believes it has a solution: “Internet trademark use should be governed under the umbrella of trademark law, as this would enhance harmonisation and provide legal certainty.”

In fact, harmonisation is at the heart of much of the legislation and policy that the association is hoping to influence on behalf of brand owners in the near future. MARQUES is a staunch supporter of harmonised IP laws across the European Union, as well as simplified processes for IP registration and protection: “The more accessible the IP process is, the greater access is afforded, especially to smaller companies, as well as bringing increased efficiency and productivity generally.” In its recent reaction to leaked documents detailing proposed changes to the European trademark framework, MARQUES told WTR that it strongly supports cooperation between national offices and OHIM, as well as greater harmonisation of national offices, including administrative opposition and cancellation procedures. However, the organisation has made it clear that these are only its initial reactions; its official response will be issued once the European Commission launches its proposals. While it awaits word from the commission, MARQUES will continue to keep watch over Europe on behalf of all brand owners.

Toe Su Aung, the 2013 president of the International Trademark Association and chair of its board of directors, is the first Asian president of the association.
The virtual and real-world impact of WIPO

Trademarks and designs are two of the IP rights on which WIPO focuses. However, the organisation is a primary influencer of the international trademark environment, a role that will increase as more countries sign up to join the Madrid Protocol's 89 existing members – Cambodia, Indonesia, Laos, Malaysia and Thailand could all be signatories within the next 18 months.

Just as important for trademark practitioners will be WIPO’s continued focus on building respect for intellectual property and encouraging the further development of national laws (already this year WIPO has teamed up with the Japan Patent Office and the government of the United Republic of Tanzania to host the African Conference on the Strategic Importance of IP Policies to Foster Innovation, Value Creation and Competitiveness – see page 35).

In addition, the Arbitration and Mediation Centre will be acting as the exclusive provider of dispute resolution services for trademark-based ‘pre-delegation’ legal rights objections under ICANN’s new gTLD programme (see page 28). So in terms of both the virtual and real-world trademark space, WIPO’s influence will only increase.

Creating an IP environment across Africa

Formerly established in 1977 (although it was pre-dated by the African and Malagasy Industrial Property Office, which was set up in 1962), the African Intellectual Property Organisation boasts 16 members (Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Côte d’Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal and Togo), and has worked to establish common administrative procedures to facilitate the protection of industrial property. As more companies look to Africa for strategic growth, its role will only become more important in facilitating an environment that supports robust trademark rights.

Keeping a weather eye on developments in Europe

The European Communities Trademark Association (ECTA) has been focusing on position papers, ACTA, the revision of the Customs Regulation and the possible entrance of standardised packaging into European legislation. Especially active when it came to the ACTA legislation, ECTA views the treaty’s defeat as a warning that European citizens are still unaware of the enormous potential of intellectual property. The organisation will continue to build its brand, participating in joint initiatives at the European Parliament and the European Commission.

Looking forward, it will continue to forge strong links with other EU organisations, such as the European Commission and the European Anti-fraud Office, as well as strengthening its ties with members of the European Parliament. The organisation enters 2013 with a new president, management team and legal coordinator.

Additionally, it will focus on expanding online, revamping its website and bolstering its presence on LinkedIn and Twitter. Of interest to trademark practitioners is the ECTA Annual Conference in Bucharest – significantly, the first IP conference of its kind in Romania.

Source: WIPO
Individuals exiting the scene

Had this list been created 18 months ago, it would doubtless have included a number of individuals who have now either exited the scene entirely or refocused their own goals.

At the end of November 2012 word leaked out that David Kappos, under secretary of commerce for intellectual property and director of the USPTO, was to leave the office by the end of January 2013. Details were initially sketchy, with no official statement from the USPTO. In interviews given days before he left the agency Kappos revealed no future plans, although less than a week later he was unveiled as a partner at Cravath, Swaine & Moore. Kappos will arguably be most remembered for his work on the ‘p’ of the USPTO and coverage of his departure has centred on his oversight of patent reform legislation, signed by the president in September 2011. However, trademarks were not starved of attention during his watch and may have benefited from increased scrutiny after the patent overhaul.

Alan Drewsen will shortly retire from his position as executive director of INTA, to be replaced by Etienne Sanz de Acedo (see page 8). The search for a successor is discussed elsewhere, but Drewsen has been a constant on the trademark scene and in his 15 years at INTA has overseen a growth in membership to 5,900 organisations from more than 190 different countries, as well as the organisation itself opening offices in Shanghai, Brussels and Washington DC.

ICANN features elsewhere on the list, but the departure of then president and chief executive officer Rod Beckstrom in July 2012 brought to an end his personal oversight of the gTLD expansion. A colourful figure (he grabbed headlines for the appointment of Elad Levinson – whom Wikipedia describes as a “self-help, weight loss, and Buddhist-inspired psychologist and guru” – as vice president of organisation effectiveness), he was central to ICANN’s new gTLD expansion and oversaw a programme that will continue to affect trademark counsel and brand specialists for years to come.