IP behind and inside movies
“I only want to talk about cinema, why talk about anything else? With cinema, we talk about everything, we get to everything,”

Jean-Luc Godard
Introduction speech

Patricia GARCIA-ESCUDERO MARQUEZ, Director EUIPO Academy
IP in the movie business

Overview
IP protection in the movie industry

Which IP can you spot in this image?
IP protection in the movie industry – Copyright
IP protection in the movie industry – Designs & trade marks

Buildings

Characters

Trade marks and designs
IP protection in the movie industry – Patents
Stagecraft
A revolution in movie production
Green screen disadvantages:

- Limited color space for foreground
- Distortions in fuzzy borders
- Additional lighting required
- Actors have to imagine virtual scene
- No parallax during camera movement
Stagecraft: How does it work?

- Stage is surrounded by screens showing the scene ("the Volume")
- Camera movement => scene is adapted by computer game engine
Stagecraft: Advantages

Stagecraft advantages:

- No color limitations in foreground
- No additional lighting required
- Actors are immersed in scene
- Background parallax
- Fast & cheap
- No postprocessing
- Reproductible scenes
Stagecraft: Impact of Stagecraft

“A Hollywood Revolution”

Stagecraft technology has to be protected
Patent Protection – Why file a patent application?

Patent proprietor(s) can prohibit third parties to:

- make
- sell
- use
- import
- store
- export
- advertise

...the invention in the country where the patent is in force
Stagecraft – Patent application claim

A computer-implemented method of generating content, the method comprising:

• capturing a plurality of images of a performer performing in a performance area using a camera,

• wherein the performer is at least partially surrounded by one or more displays presenting images of a virtual environment,

• wherein the images of the virtual environment within a frustum of the camera are updated on the one or more displays based on movement of the camera is (...)

Stagecraft – Commercialization & patent timeline

Mandalorian 1 production starts in Los Angeles
10/18

Mandalorian 1 is released on Disney+
11/19

US patent application filed
11/18

International (PCT) application filed
11/19

Application published
05/20

PCT search report: Claims are novel and inventive

Further Stagecraft volumes are built in:
Los Angeles, Sydney, New York, London

PCT national phase: Select countries for patenting
06/21
2021
In which countries would you get patent protection for Stagecraft?
3 Trade marks and designs
Protection examples and merchandising
Trade marks – Studio names

EUTM 1279884
Classes 9, 16, 25, 28, 35, 41

EUTM 6890511
Classes 9, 38, 41

EUTM 2650216
Classes 9, 15, 28, 35, 38, 41

EUTM 142703
Classes 9, 16, 25, 35, 41

EUTM 18419646
Classes 9, 38, 41
HARRY POTTER AND THE CHAMBER OF SECRETS

EUTM 3426533 (word mark)
Classes 3, 5, 9, 14, 16, 18, 20, 21, 24, 25, 26, 27, 28, 29, 30, 32, 41
Trade marks – Movie titles

STAR WARS
EUTM 018080699
Classes 25, 28, 41

THE MANDALORIAN
EUTM 018258245
Classes 16, 18, 25, 28
PRINCESS LEIA – EUTM 018300385 – Classes 16, 25, 28
ARTOO-DETOO (R2-D2) – EUTM 559542 - Classes 16, 25, 28
DARTH VADER – EUTM 3494325 – Classes 9, 16, 28
YODA – EUTM 559591 - Classes 16, 25, 28
JABBA THE HUTT – EUTM 559526 – Classes 16, 25, 28
ANAKIN SKYWALKER – EUTM 559674 - Classes 16, 25, 28
JAMES BOND 007 - EUTM 2461150 – Classes 9, 25, 28, 41
Trade marks – Movie characters

Harry Potter

EUTM 1696202
Classes 9, 16, 21, 25, 28, 35, 38, 41, 42

007

EUTM 0009141037
Classes 3, 6, 9, 14, 16, 18, 21, 25, 28, 35, 36, 38, 41, 42, 45

EUTM 12207411
Classes 16, 25, 28

EUTM 8759482
Classes 25, 28
Trade marks – Movie characters

EUTM 5896311
Class 28

EUTM 5896601
Class 28
Trade marks – Well-know phrases in movies

- I’VE GOT A BAD FEELING ABOUT THIS – EUTM 17480435 – Class 28
- MAY THE FORCE BE WITH YOU – EUTM 18300364 – Classes 16, 25, 28
Designs – Movie characters

US 265754S
Registered 1980
Expired 1996

UK 6106256
Toy
Why do film companies protect movie titles and characters as trade marks and designs?
Merchandising – Most common goods and services

- Class 9: Electronic games
- Class 14: Pins, medals
  - Class 16: Stationary and writing material, stickers
  - Class 18: Bags, umbrellas
  - Class 25: Clothing, footwear, headgear
  - Class 28: Toys, games, costumes
- Class 41: online games, video/music content
Merchandising – Star wars example

Merchandising – Star wars / Lego

Co-Owners: Lucasfilm Ltd. LLC and LEGO Juris A/S
EUTM 016289051
Class 28 – Toys …
Trade marks – Graphical representation? The lion’s roar - MGM

EUTM 143891
Classes 9, 38, 41 and 42.
R 781/1999-4
Trade marks – Graphical representation? The lion’s roar - MGM

Classes 9, 38, 41 and 42.
• Sound theme used since the first James Bond movie was released in 1962

• Refused because lack of distinctive character for the G&S applied for

• Appealed before the Boards – 1996/2020-5
Decision 12/03/2021 in case R 1996/2020-5, annulled the examiners decision.

The sound sign is also capable of indicating the commercial origin of the goods for which registration is sought.

There can be no stricter rules applied as regards the length of sound marks, [...] that would render them memorable and distinctive as a result.

Even, if the whole sound sign might not be easily memorised, because of the length [...] consumers generally take more note of the beginning of a sign than of its end
Trade marks – Morality or public policy? – Fack Ju Göhte
The following shall not be registered:

…

(f) trade marks which are contrary to **public policy** or to accepted principles of **morality**;

**R 2205/2015-5**

T-69/17, Judgment of 24 January 2018

C-240/18, Judgment of 27 February 2020
Trade marks – Non-use

Grounds for revocation

The rights of the proprietor of the EU trade mark shall be declared to be revoked on application to the Office or on the basis of a counterclaim in infringement proceedings:

(a) if, within a continuous period of five years, the trade mark has not been put to genuine use in the Union in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use; …
Trade marks – Non use - MONEYPENNY

EUTM 5247374
Classes 3, 9, 14, 16, 25, 28, 38 and 41

Examination
Opposition proceedings
Registered EUTM

21/07/2006 EUTM application received
28/04/2008 Application published
29/07/2008 End of opposition period
20/06/2011 EUTM registered and published
04/05/2020 Registration cancelled

3 oppositions received
Movie “Flash of Genius”

Seen through the eyes of a European Patent Examiner
November 1964: 3.4 Million wipe test passed (Ford spec.)
December 1964: US patent application filed

Ford: “Kearns’ intermittent wiper will be used in 1969 Mercury line”

Kearns gives prototype to Ford engineers

Kearns starts preparing production of intermittent wiper

5 months later:
  - Ford dismisses Kearns
  - Not interested anymore
  - Ford engineers designed their own intermittent wiper
Kearns’ intermittent wiper configuration was sold by:

- 1969 **Ford** (20.6 million cars with wiper by 1989)
- 1974 **General Motors**
- 1977 **Chrysler, Saab, Honda, Volvo, Rolls-Royce, Mercedes**
Flash of Genius – Patent litigation against Ford

• 1978 - Kearns files suit against Ford for **patent infringement**: => demands 1,6 billion US dollars in lost profits and penalty

• Ford’s defense:
  – Kearns’ patent is invalid

• Ford stalls procedure

• 1990 - Ford case comes to trial before **jury**
  – Is Kearns’ patent valid?
  – Is Ford infringing the patent?
  – How much should Ford pay for infringement?
Flash of Genius – US assessment of inventiveness

When is a patent inventive?

- 1941 “Flash of Genius” decision by US Supreme Court:
  
  “New device must reveal the flash of creative genius, not merely the skill of the calling”


  “Patentable invention must be nonobvious to a person of ordinary skill in the art at the time the invention is made”
"An invention shall be considered as involving an **inventive step** if, having regard to the **state of the art**, it is **not obvious** to a person skilled in the **art**."

**Problem-solution approach at EPO:**
- **Closest prior art:** Continuous windshield
- **Problem:** Wiper screeching
- **Solution:** Intermittent wiper control circuit

- Is it obvious to arrive at the solution?
Inspired by eye blinking => “Flash of genius”
Trade marks inside movies

Product placement
“Today product placement is a multibillion dollar industry that generates hard cash for movies, creates new identities for brands, but most importantly delivers the holy grail of marketing, co-promotion.

You see, co-promotion is what takes a regular movie and turns it into a blockbuster”.

Morgan Spurlock
Product placement – “Wings” – 1927- Hershey’s chocolate bar
**E.T. (1982) - REESE’S PIECES**
From ‘Dr. No’ to ‘No Time to Die’ – Rolex, Martini, Aston Martin, BMW, Smirnoff
SKYFALL (2012) – Heineken
Unauthorised product placement .... allowed?
Hangover 2 and “fake” Louis Vuitton bags

Wouldn't Louis Vuitton appreciate the free product placement, since the average viewer couldn't tell the bags were fake anyway?
FLIGHT (2012) and BUDWEISER
Slumdog Millionaire and Mercedes Benz – Tarnishment?
Coming to America (1988) - Likelihood of confusion? Advantage of the reputation?
Logorama (2009)

SPECTACULAR CAR CHASES, AN INTENSE HOSTAGE CRISIS, WILD ANIMALS RAMPAGING THROUGH THE CITY AND EVEN MORE WILL HAVE YOU AT THE EDGE OF YOUR SEAT IN...

LOGORAMA.
Logorama (2009)
Trade mark infringement tarnishment? Freedom of expression?
Takeaways
## Means of IP protection for movies

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Closing speech

Xavier SEUBA,
Director EPO Academy
Keep in touch with EUIPO Academy

https://europa.eu/knowledge/

Check out the 2021 Learning Catalogue!
3 speakers passionate about IP & cinema

Cayetana BORREGO  
Customer Dpt, EUIPO

Jens HORSTMANNNSHOFF  
Patent Granting Process DG, EPO

Alina BUTUMAN  
Operations Dpt, EUIPO
Stagecraft:
Here are excellent videos explaining and showing Stagecraft and its usage in the Mandalorian. The technology was actually developed during the making of the first series:
https://www.youtube.com/watch?v=8yNkBic7GfI
https://www.youtube.com/watch?v=gUnxzVOs3rk
https://www.youtube.com/watch?v=-gX4N5rDYeQ

Here is the Stagecraft PCT patent application by Lucasfilm:

Here is the Stagecraft webpage of ILM and Lucasfilm:
https://www.ilm.com/ilm-stagecraft/

According to the press, Stagecraft will revolutionise movie making:
https://www.sueddeutsche.de/kultur/stagecraft-industrial-light-and-magic-lucasfilm-the-mandalorian-1_5252246
https://www.economist.com/technology-quarterly/2020/10/01/virtual-environments-are-being-used-everywhere

Flash of Genius:

The “Flash of Genius” movie is based on this article by the New Yorker from 1993, which provides much more detail than the movie:
https://www.newyorker.com/magazine/1993/01/11/the-flash-of-genius

Here is a link to Mr. Kearn’s first windshield wiper patent:
Movie extracts (under license)

“Flash of genius”:
Director: Marc Abraham
Year: 2008
Producer: Universal Pictures, Intermittent Productions, Spyglass Media Group, Strike Entertainment

“Coming to America”
Director: John Landis
Year: 1988
Producer: Universal Pictures; Eddy Murphy Productions, Paramount Pictures

“Wings”
Director: William A. Wellman
Year: 1927
Producer: Famous Players-Lasky – Paramount

Teaser of “Logorama”
Directors: François Alaux, Hervé de Crecy et Ludovic Houplain (H5)
Year: 2009
Producer: AUTOUR DE MINUIT