

Evolution of Intellectual Property

**Jurisprudence in favour of an unpublished literary and artistic work
used against a model (*European form of a design patent*)
subsequently registered at a State-owned institution (*the INPI*) by a third party**

World premiere

Court ruling in favour of a prototype in an unpublished *Intellectual Passport CB*

In addition to the ruling rendered in 1999 by the Court of Appeal of the United States of America's Federal Circuit of Courts in favor of copyright over patent; to the ruling rendered in Belgium in 1997 in favor of the copyright of Hergé's heirs over the unauthorized copy of artistic drawings for commercial and industrial purposes; to the countless court cases won by Walt Disney Studio over the past several decades for similar wrongdoings (*i.e. plagiarism*) **and above all to the international ruling rendered in 1987 in favor of French Professor Luc Montagnier's copyright over American Professor Robert Gallo's patent for the discovery of the AIDS virus**; for the first time, a modest inventor has successfully used in a court of law an unpublished literary and artistic work (*created in 1994*) against a design patent subsequently registered by a third party. This case confirms that a previously undisclosed creative work ~ *i.e. a **secret** work* ~ is a legally valid anteriority that can be used to annul a patent subsequently registered by a third party on the same invention. The details of this case are quite revealing.

In 1994, a French "**creator**" (*i.e. an inventor who became a creator through a Work of the Mind*) included an original and aesthetic container in an unpublished literary and artistic work (*prototype of the Intellectual Passport CB*) entitled "*Change the city*" (*Librairie bleue éditions – library of inventions N° 2221 – Troyes – France*). In early 1997, namely one year after this innovative product had first been introduced into the market, a third party decided to copy and market it. Unaware of the existence of the **creator's** literary and artistic work ~ *and doubtless influenced by his legal counsels* ~ the **so-called inventor** registered a "*model*" (*a European form of design patent*) on this container on July 31st, 1997. Since no previous monopolistic title had ever been registered on this product at the "*INPI*" (*French equivalent of the U.S. Patent and Trademark Office*), the **so-called inventor** thought that he could safely claim monopolistic rights on this aesthetic container... By the end of the year 2000, claiming that he was the true inventor, the counterfeitor/plagiarist initiated legal proceedings against the chains of stores that were exploiting the product included in the **creator's** work: Slymag Super U, System U's Eastern Regional Head Office and Alliance Development Innovation. At first, the **creator** tried but in vain to reach an out-of-court settlement with the **so-called inventor**. In December 2001, he asked Michel Dubois to help solve this matter. As editor and expert in Intellectual Property, Mr Dubois then started a correspondence with the **so-called inventor's** legal counsels. This correspondence was based on a strategy aimed at obtaining a settlement or a prompt and favorable court ruling.

Having learned that the **creator** was legally the author ~ *hence the owner* ~ of the aesthetic containers, the **so-called inventor** asked one of Europe's leading expert on Intellectual Property, Mr. Jacques Azéma (*professor at Lyons, France*), to confirm the authenticity of the **creator's** literary and artistic work which the latter had deposited at his lawyer's office in Paris. Upon complying with this request, Mr. Azéma confirmed without hesitation that this creative work represented a legally valid anteriority that could be used against the **so-called inventor's** subsequently registered title. Disgruntled, our **so-called inventor** then brought the matter before the Tribunal of Commerce of Lyon. On September 30th, 2003, after a single hearing and a six-month delay, the court ruled in favor of the **creator's** copyright and dismissed the **so-called inventor's** suit on the grounds that his "*model*" (*bearing INPI N° 974631*) lacked novelty.

Undeterred, the **so-called inventor** appealed the judgment. On April 1st, 2004, the case was heard by the Court of Appeal of Lyon; less than two months later, the appellate court upheld the verdict (***Court of Appeal of Lyon, May 27th, 2004 – R.G. 03/06633***), and thus confirmed the judgment rendered seven months earlier by the Tribunal of Commerce. Justice was well served, at an affordable cost: one year of correspondence between Michel Dubois and the plagiarist's legal counsels, ten months for the ruling by the Tribunal of Commerce and seven months for the ruling by the Court of Appeal (*Both rulings required but one hearing*). The following year (2005), the appeal was maintained by the Court of Appeal's Review Committee. Finally, in 2006, France's **Supreme Court** ~ *the Cour de Cassation* ~ dismissed the **so-called inventor's** appeal. (***Cassation Case, July 4th, 2006 – R.G. 05/4797***). This should encourage inventors and owners of small or medium-sized enterprises, few of whom have the means, time and competence required to win a patent infringement suit.

**For an in-depth knowledge of the *Intellectual Passport CB*, order
the latest book by Michel Dubois & Co.: *At last, intellectual property is affordable for everyone!***