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GUEST EDITORIAL PREFACE

The challenges and opportunities
of food and the role of IP

Food is a subject that all of us can relate to. While reading this you might be thinking about where to go for lunch or what to make for dinner. Maybe you remember those perfectly matched tastes of your favorite dish—a dish that might have been composed by a star chef or by your own mother. Food, and well-matched drinks, is truly a source of great value and enjoyment. At the same time we all know that everyone does not have sufficient access to food, even though few of us can fully comprehend the individual and global tragedies of starvation.

Developed nations spend a decreasing share of their income on food. In the United States the share has decreased from roughly 25% of disposable personal income to roughly 10% over the last century.¹ In Sweden, the share has dropped from roughly one third in the 1950s to roughly 17% today.² So while some of us spend a decreasing share of our income on food³ due to a combination of personal income growth and agricultural productivity growth, others struggle to find enough to eat in order to survive. In 2018 an estimated 820 million people did not have enough to eat, according to WHO.⁴

There are other challenges as well. While the productivity growth of the industry has on the one hand helped to lead the way out of poverty, it has on the other hand been enabled by the use of pesticides, antibiotics, and additives in agriculture and food production, with consequences for nature, wildlife, antibiotics resistance, and health. The productivity growth has also led to an increasing consumption of what has historically been expensive food, such as beef meat, which is related to a relatively large CO₂ footprint. And despite all of this, local farmers struggle to compete and reap sufficient returns due to price pressure, while consumers struggle with food-related health issues such as obesity, type 2 diabetes, and increased risks of various types of cancer.

Thus, while food is the source of many valuable consumer experiences, it is also related to large individual, business, and societal challenges, meaning that there are ample opportunities for improvement on various levels. For example, Stanford Food Design Lab conducts research and teaching to address the interaction between food and human via technology and innovation. In particular, the lab explores innovative ways of reducing food waste and negative environmental impact by introducing the concept of upcycling, or in other words creating quality products from what was previously considered waste.

Now, even though food is clearly a relevant subject area for society at large, is it really relevant for this journal focusing on intellectual property (IP)? We believe that it is. For example, California-based Impossible Foods has several patents on its plant-based Impossible Burger and the related production process. The company has researched what makes meat taste like meat, and been able to invent around the actual use of animal products and replaced it with plant-based ingredients. After trying it at the faculty club at UC Berkeley we can confirm that the result is a very tasty and meat-like burger. Investors seem to agree, with a \$300 million funding round this spring, partly driven by the company's IP position, which thereby also functions as an enabler of the transition from meat-based to plant-based food products. A more well-known case is Coca-Cola. Coca-Cola's competitiveness is highly dependent on one of the most valuable trade secrets (the Coca-Cola formula) and one of the most valuable trademarks (with an estimated value of \$63 billion in 2019⁵), and it has maintained its competitiveness over decades despite several strong competitors and imitations.

Some other examples are provided in this issue. The articles by Tsirtou and Sfetsiou both focus on the use of trademarks and geographical indications and their role for tracing the origin of products and goods, an issue that is of growing interest to consumers as a reaction to the increasing distance between consumers and food producers. These articles are focused on the cases of Cyprus (and hal

loumi cheese) and Macedonia, respectively. The article by van der Merwe takes a totally different approach, focusing on fine dining and asking the question if IP law offers protection for signature dishes and novel plating. He studies the case of the internationally acclaimed restaurant Alinea in Chicago, where Mike Beagle created a unique and edible balloon that quickly rose to fame on social media, in turn leading to several imitations.

This issue is not only about food, however. The article by Ghidini examines the intricacies of IP law relating to products that are both useful and aesthetically beautiful, involving both design rights and copyrights. The article by Gerrish and Molander Skavlan analyzes the recent Digital Single Market (DSM) directive in the European Union and its implications for text and data mining, possibly inhibiting the European data science and artificial intelligence industry. Finally, the case note by Ljungblad covers the invalidation of European Union trademarks due to applicants having acted in bad faith. More specifically the case note describes a case involving the word mark 'MONOPOLY', (re-)filed by Hasbro.

With this short appetizer we hope that we have raised your interest for the rest of this issue. Enjoy the read.

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¹ See, e.g., United States Department of Agriculture: <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/food-prices-and-spending/> [accessed on 2019-11-18].

² See, e.g., Ekonomifakta: [https://www.ekonomifakta.se/fakta/ekonomi/hushallens-ekonomi/hushallens-inkomster/](https://www.ekonomifakta.se/fakta/ekonomi/hushallens-ekonomi/hushallens-ekonomi/hushallens-inkomster/)

[accessed on 2019-11-18].

³ These numbers include spending on food away from home (restaurant food and similar).

⁴ See WHO: <https://www.who.int/news-room/detail/15-07-2019-world-hunger-is-still-not-going-down-after-three-years-and-obesity-is-still-growing-un-report> [accessed on 2019-11-18].

⁵ See Interbrand: <https://www.interbrand.com/best-brands/best-global-brands/2019/ranking/> [accessed on 2019-11-25].



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