

- Dharma a/k/a Sahaja Yoga v Sahaja Yoga Ex-Members Network and SD Montford* WIPO Case No D2001-0467 (*Yoga*), where it was described as a form of “damage”.
- 32 *Britannia*.
- 33 *Britannia*.
- 34 *Legal & General*
- 35 *Legal & General* and the majority finding in *Yoga*.
- 36 This approach was affirmed in *Estee Lauder*.
- 37 Initially in *Tribeca Film Center, Inc. v. Lorenzo Brusasco-Mackenzie* WIPO Case No D2000-1772, a non-complaints website case, which held that the *Mission KwaSizabantu* approach to what constitutes a ‘competitor’ would result in the “Policy’s bad faith requirement [being] diluted beyond recognition”.
- 38 *Britannia*.
- 39 *Compagnie de Saint Gobain v Com-Union Corp* WIPO Case No D2000-0020 (*Saint Gobain*).
- 40 *Compagnie Generale de Matieres Nucleaires v Greenpeace International* WIPO Case No D2001-0376 (*COGEMA*).
- 41 *Council of American Survey Research Organisations v The Consumer Information Organisation, LLC, a/k/a Pinelands Web Services* WIPO Case No D2002-0377 (*Council of American Survey Research Organisations*).
- 42 For example, in *Estee Lauder* where the registrant’s “avowed ‘dislike’ of the Complainant...and the exclusively ‘complaint’ purpose of its sites” were used as evidence of bad faith registration, or *Spence-Chapin* where criticism of the Owner’s business was held to constitute ‘interference’ with it, or *Council of American Survey Research Organisations* where registration “for the purpose of disparaging Complainant’s business...had a commercial impact” and was thus an indicia of bad faith, or *Saint Gobain* where bad faith was found because the registrant “knowingly chose a domain name which is identical and limited to the trade mark” when it “could have chosen a domain name adequately reflecting both the object and independent nature of its site”.

W3C Patent Policy

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The World Wide Consortium (**W3C**), the international internet standards body, has approved the W3C Patent Policy (**Patent Policy**). The Patent Policy aims to reduce the threat of key components of Web infrastructure being the subject of patents which prevent further Web development, by ensuring that patented Web technologies are made available royalty-free.

According to W3C, the success of the Web to date has largely resulted from the early decision by W3C Members involved in building the Web to base the Web on royalty-free standards, and the adoption of the Patent Policy is a continuation of this commitment.

The Patent Policy provides that:

- all participants in Working Groups developing W3C Web standards (known as **Recommendations**) must agree to license essential claims, namely patents that block interoperability, on a royalty-free basis;
- in some circumstances, Working Group participants may exclude specifically identified patent

claims from the royalty-free commitment. This is conditional upon such exclusions being highlighted shortly after publication of the first public Working Draft of each Recommendation, to prevent difficulties arising from ‘surprise’ patents; and

- W3C members are required to disclose patents that may be essential to the Recommendation, while other parties who have seen the technical drafts of the Recommendation and have actual knowledge of potentially essential patents are requested to make similar disclosures.

In addition, the Patent Policy stipulates that where technologies proposed for inclusion in Recommendations are not available with terms consistent with the Patent Policy, for example in cases where the patent holder wishes to charge a fee, a Patent Advisory Group (**PAG**) will be convened to address the particular patent claim. The PAG will be comprised of W3C Members participating in the Working Group and may recommend that the patent be

legally analysed, instruct the Working Group to attempt to work around the patent or remove the patented technology, or may suggest ceasing all work in the area. If it is impossible to achieve consistency between the patent and the W3C licensing requirements, the PAG may recommend that an exception be made and the patented technology included in the Recommendation. If such a recommendation is made, the precise licensing terms must be publicly disclosed and are subject to review by the public, the W3C Membership and the W3C Director. According to W3C, this exception handling process was included in the Patent Policy to preserve a degree of flexibility for unexpected situations that may arise in Recommendation development.

Some concerns have been raised regarding the efficacy of the Patent Policy, for example see <http://www.itweek.co.uk/News/1141179>. More details about the Patent Policy can be found on the W3C website, <http://www.w3.org/2001/ppwg/>.