



Newsletter April

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Enhancement in pharmaceutical law in Munich with Dr. Alexander Meier

Dr. Alexander Meier joined the Munich office at the beginning of January 2019 as a partner in pharmaceutical law. Preu Bohlig & Partner thus continues to rejuvenate its practice and to integrate all locations.

Alexander Meier specializes in European and German regulatory affairs relating to chemical and biological drugs, including advanced therapies and medical devices, as well as all related regulatory issues. He has been working in the field of pharmaceutical law since 2000 and thus has more than 18 years of relevant professional experience, both as an outside counsel and as an inhouse attorney. Alexander Meier started working as outside counsel for more than five years in two law firms specializing in pharmaceutical law in Munich, advising both originator and generic companies. As of May 2006, Alexander Meier worked for Novartis for 11 years with increasing responsibilities, first in Holzkirchen for its generic Sandoz Division as Head of Legal and Compliance Officer for Sandoz/Hexal Germany and as of September 2011 in the Headquarter in Basel, first for the originator Division as Global Head, Legal of TechOps, Regulatory and Development for Novartis Pharma and subsequently in Group-wide role as Head of Legal, Global and Pharma Drug Development for Novartis. This included in particular legal advice to all global development functions as well as to all business areas of Novartis (general medicine and oncology including cell & gene therapy products) including compliance. In May 2017 Alexander Meier went back to private practice and worked for Hoyng Rokh Monegier in Amsterdam and Munich until 31.12.2018.

Alexander Meier's addition brings the number of lawyers working in Preu Bohlig & Partner's Munich office to fourteen.

Peter von Czettritz, partner responsible for pharmaceutical law, is very pleased about the further expansion in Munich: „At Preu Bohlig & Partner we have an extremely motivated and powerful team. We are very pleased to be able to further strengthen this team with the arrival of

Alexander Meier in Munich. His expertise in pharmaceutical law suits us perfectly and will expand our range of services. In the end, the circle closes because we both started at Harms & Melzer in pharmaceutical law“.



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New in Düsseldorf: Preu-Prep for Patent Attorney Candidates

In addition to the Preu course, Preu Bohlig has been offering the Preu-Prep at its Düsseldorf location since January 2019. The Preu-Prep is a voluntary series of events aimed in particular at patent attorney candidates at the beginning of their training.



As part of the Preu-Prep, we use case studies from the training of patent attorneys to explain the legal way of thinking and how to solve problems, thus providing the candidates with valuable assistance in successfully solving the compulsory exams later on in their training. The Preu-Prep consists of a total of 11 events, each of which is two hours long.

On the first day of the first half of the year in January 2019, seven patent attorney candidates arrived at the Düsseldorf office. After the first introduction to civil law, the candidates had the opportunity to discuss the upcoming challenges of patent attorney training over a glass of beer and wine.

The Preu-Prep will start again in September 2019.



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The presumption of urgency in trademark law pursuant to Sec. 140 para. 3 German Trade Mark Act (MarkenG)

It is a well-known fact that a preliminary injunction requires both a claim and a ground for an injunction (so-called "urgency"). By the Trade Mark Law Modernization Act (Markenrechtsmodernisierungsgesetz), which came into force on January 14, 2019, a presumption of urgency for applications for a preliminary injunction under trademark law is introduced pursuant Sec. 140 para. 3 MarkenG. Therefore, in case of an application for an preliminary injunction based on a trademarks, the applicant can now invoke this presumption of urgency since January 14, 2019 and, in principle, does not have to provide any further details on the ground for the preliminary injunction.

The new Sec. 140 para. 3 MarkenG states „In order to secure the claims for injunctive relief specified in this Act, preliminary injunctions may also be issued without the presentation and prima facie evidence of the conditions specified in sections 935 and 940 of the Code of Civil Procedure“. A presumption of urgency corresponding to the new Sec. 140 para. 3 MarkenG has always existed in competition law. Already Sec. 25 of the Act Against Unfair Competition of 1909 codified a presumption of urgency which up from 2004 Sec. 12 of the new Act Against Unfair Competition pursued and linguistically specified.

In case law and literature it has always been disputed whether the presumption of urgency pursuant to Sec. 12 para. 2 Act Against Unfair Competition can be applied analogously in trademark law (cf. overview of the dispute in Stroebele/Hacker/Thiering, Trade Mark Act, 12. Edition, Sec. 14 no. 581).

With an order of October 12, 2018, still issued under the old trademark law, printed e.g. in GRUR-RR 2019, 64, the Higher Regional Court of Nuremberg followed the prevailing opinion and rejected an analogous application of the presumption of urgency pursuant to Sec. 12 para. 2 Act Against Unfair Competition to trademark law with the result that the applicant had to substantiate the ground for its application. In this case, the defendant had published a photo on his website and thus infringed the applicant's trademark. After the applicant's warning, the defendant did not submit a cease-and-desist declaration including a penalty clause, so that

the applicant's claim for injunction relief has not been settled. However, the defendant actually removed the trademark infringing photo from his website. Since further acts of infringement by the defendant had not been disclosed, the Higher Regional Court of Nuremberg assumed that the defendant had ceased the act of infringement. In such a case, according to the Higher Regional Court of Nuremberg, the prosecution was no longer urgent. A preliminary injunction was no longer necessary to secure the applicant's claims. It was reasonable for the applicant to enforce his claims in the main action proceedings. Therefore, at least the ground for a preliminary injunction was lacking. Thus, the Higher Regional Court of Nuremberg rejected the application for a preliminary injunction.

According to the new trademark law, the Higher Regional Court of Nuremberg should have assumed that there was a presumption for the ground for the preliminary injunction because of the presumption of urgency now introduced into the Trade Mark Act pursuant to Sec. 140 para. 3 Trade Mark Act.

However, the presumption of urgency is rebuttable. The defendant can therefore demonstrate – either in a protective brief or in an objection brief – that he had ceased the infringing act. The same applies if it is assumed that the applicant has an obligation to also present the circumstances known to him that speak against an urgency, as it is the case with regard to known objections to the claim for a preliminary injunction.

It is questionable whether the Higher Regional Court of Nuremberg would also have come to the same conclusion under the new trademark law that there was no ground for a preliminary injunction and that the application for an injunction should therefore be rejected. As far as known only the Higher Regional Court of Nuremberg and the Higher Regional Court of Munich held the opinion that the urgency for a preliminary injunction no longer applies if the infringing act is ceased. Nevertheless, this assumption only applies if there is no presumption of urgency, cf. Higher Regional Court of Munich, WRP 2014, 591. Since there is now a presumption of urgency in trademark law, the Munich courts will probably no longer assume in the future that a mere cessation of the infringing act without the submission of a cease-and-desist declaration including a penalty clause does not give rise to a ground for preliminary injunction.

The other Higher Regional Courts do not in any case assume – as far as known – that the urgency does not

apply if only the infringing act is ceased without the submission of a cease-and-desist declaration including a penalty clause. Exception: if the infringement was committed at a special event, e.g. an anniversary or Christmas sale, this may speak against the ground for a preliminary injunction if the act cannot be repeated or can only be repeated after a longer period of time (cf. inter alia Cepl/Voß, Commentary on Intellectual Property Rights, 2. Edition, Sec. 940, no. 95).



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Legal 500 Germany 2019

Trademarks

Preu Bohlig & Partner maintains particularly close contacts with French clients, but also counts a large number of well-known German companies among its clients. The team has many years of experience in both the prosecution and litigation areas, with the support of clients in design law increasingly gaining importance in addition to the traditionally strong trademark and competition practice. Andreas Haberl, whose experience portfolio also includes numerous due diligences, advised Eisl Sanitär on the enforcement of design rights. Daniel Hoppe, coming from Harte-Bavendamm, joined the team in July 2017 and is now the main contact in the Hamburg office, while Astrid Gérard in Munich, Christian Kau and Torben Düsing in Düsseldorf and Christian Donle in Berlin, appointed as partners in July 2018, are among the main advisors there.

Federal Court of Justice (FCJ) on the scope of protection of a Community design

In the decision Meda Gate (I ZR 164/17), the Federal Court of Justice again continued its existing case law regarding the scope of protection of a Community design and supplemented the decision Kinderwagen I in this respect.

In this decision, the FCJ stated that the difference between the plaintiff's design-in-suit and the existing design corpus in principle has to be assessed on the basis of the overall impression of the opposing designs. A mosaic-like examination of individual elements of different oppositions is not permissible. It is not sufficient for the assessment of the overall impression, if the judgment only inserts illustrations without expressly establishing the overall impression.

It is not permissible only to compare individual features of previously known designs with the subject matter of protection of the design-in-suit for the purpose of comparing the design-in-suit with the known existing design corpus. Thus, even if one or more design features of a Community design are found in the existing design corpus, this does not say anything about the scope of protection. This mosaic-like comparison is already inadmissible on principle. The only decisive factor is the overall impression of the opposing designs, which de-

termines the degree of similarity between the design-in-suit and the known existing design corpus. The FCJ has therefore annulled the judgment of the Higher Regional Court of Cologne and referred the case back for retrial.



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Best Lawyers 2019 – Lawyer of the Year

Christian Kau is listed as
„Best Lawyer of the Year in Technology Law“

Neutralization theory in trademark law

In its judgment of 12.07.2018, the Federal Supreme Court ruled in the case „combit/Commit“, file number: I ZR 74/17, on the question under which circumstances a similarity between the conflicting signs can be neutralised visually and phonetically by conceptual differences with the result that there is no likelihood of confusion. The Bundesgerichtshof has held that such a neutralisation can only be considered if at least one of the signs concerned has a clear and definite meaning for the goods or services in question which can be readily grasped.

The decision of the Federal Court of Justice was based on the following facts:

The applicant is the proprietor of a Union word mark „combit“ and of a Union word figurative mark „combit“, each registered for the development, creation, installation, maintenance and rental of data processing programs, installation and leasing of software and hardware, and consultancy in the field of computer hardware and software. The defendant sold a so-called professional service automation software called „commit CRM“. CRM is the well-known abbreviation for „Customer Relationship Management“ and was therefore negligible as a descriptive component in the character comparison.

The appellate court (OLG Düsseldorf) was of the opinion that there was a visual and phonetic similarity between the trademark „combit“ on the one hand and the challenged designation „commit“ on the other hand, even if it was not high. On the phonetic level, it must be borne in mind that, in the pronunciation of the applicant's mark, there is a lip-shape between the individual syllables, namely at the transition from „com-“ to „bit“, which is not the case with the contested designation „commit“. However, that visual and phonetic similarity between the conflicting signs is neutralised by the conceptual content of the contested sign ‚commit‘. „To commit“ is part of the basic English vocabulary and means ‚to commit‘, ‚to commit‘, ‚to commit‘, ‚to instruct someone‘. „Commitment“, as its abbreviation „commit“ could also be understood, means „devotion“, „obligation“, „commitment“, „promise“.

The Federal Supreme Court did not follow this assess-

ment and first explained the principles of the so-called neutralisation theory as follows:

„However, according to the case-law of the Court of Justice of the European Union, in the global assessment of the conceptual, visual and aural similarity of the signs, account must be taken of the fact that the conceptual and visual differences between two signs may neutralise their existing phonetic similarities if at least one of the signs has a clear and specific meaning so that the relevant public can grasp it easily.

According to the Bundesgerichtshof, there was no such clear and definite meaning of the sign ‚commit‘ for software which could easily be grasped. The Court of Appeal itself had already stated that the verb „to commit“ or the noun „commitment“ had several meanings. A clear meaning of this word for software was therefore not ascertainable for this reason alone. The neutralisation assumed by the appellate court was therefore out of the question. Moreover, the lip reshaping correctly accepted by the Düsseldorf Higher Regional Court in pronouncing the action marks „combit“ does not argue against the possibility of unclear pronunciation, but in favour of a similarity in phonetic terms.

In the present case, as has been pointed out, the issue was whether a visual or phonetic similarity between the signs could be counteracted by a meaning. The ‚neutralisation theory‘ may, however, also be taken into consideration where a phonetic similarity between the signs is neutralised by only a slight similarity or even dissimilarity in the visual impression (see, in particular, ECJ GRUR 2006, 413 et seq. - ZIRH/SIR; GRUR 2008, p. 343 et seq. - Il Ponte Finanziaria Spa v OHIM). For its part,

the BGH has dealt with the theory of neutralisation in particular in the „Kappa“ case, GRUR 2011, page 824 et seq. In this case, he denied a neutralisation of the phonetic identity of the conflicting signs by completely different figurative elements in any event in the event that the goods in question (in the concrete case: porcelain, suitcases, bags) are not regularly bought only on sight.

It should be noted for the purposes of the case-law in Germany that, in order to assume that the conflicting signs are similar, similarity in one category of perception (visual, phonetic or conceptual) is sufficient (see, in particular, Ströbele/Hacker/Thiering, concerning Paragraph 9 of the Markengesetz, paragraph 268 with further evidence) and that a neutralisation of similarity in one category of perception by the low degree of similarity or dissimilarity in another category of perception can be considered only exceptionally.

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Profil: [Link Website](#)**Best Lawyers****Best Lawyers Germany 2019**

Ludwig von Zumbusch and Christian Donle are listed as
„Best Lawyer in Intellectual Property Law“

News about the FRAND objection

Hardly any other area of patent law is currently developing as dynamically as the antitrust licensing objection. Due to the large number of standard-relevant disputes, especially the Düsseldorf Higher Regional Court has significant impact on the dogmatics of this legal figure.



In a recent case, the decision of which is expected in April 2019, the Higher Regional Court of Düsseldorf (OLG) has now announced that it will further develop the boundaries licensing defence.

The question of whether the legal successor to a standard essential patent (SEP) is bound by the FRAND declarations of its predecessor is controversial. The OLG is expected to affirm this. The FRAND declaration is not only binding as such, but also with regard to the amount of a fair and reasonable royalty fee. The purchaser of the patent may not deviate from the licensing practice of his predecessor in title in terms of increasing the royalty fees. If this were to happen, the following licensees would be discriminated against compared to the previous license seekers.

The Higher Regional Court further emphasises that all licence agreements must be disclosed so that the potential new licensee can determine whether the offer submitted to him is non-discriminatory.

A change in licensing practice and licensing conditions (upwards) is only possible for the SEP holder if all licenses have expired and he then starts establishing a new, non-exploitative licensing regime.

Of particular importance is the finding of the Higher Regional Court that judicially enforced license conditions cannot per se establish a FRAND license standard. Court licensing conditions, which, for example, are fixed in a judgment or agreed upon under the pressure of court proceedings, must be disregarded for the assessment of the usual and reasonable license fees, since FRAND license fees need to be established „on the market“ alone. The SEP holder therefore cannot change his licensing practice after a favourable court ruling and increase the license fees to the amount that was decided in the respective ruling if this exceeds the license conditions negotiated and concluded so far.

The latter is probably a reaction of the Higher Regional Court to an English court practice which determines the FRAND fees independently of the different license offers of the parties applying the court's judicial discretion.

In the announced decision, appeal to the Federal Court of Justice (FCJ) will probably be admitted. Therefore, in addition to the already pending actions, another FRAND case will presumably arrive at the FCJ. For the further shaping of European law, it would be of tremendous importance if the FCJ would use one of these proceedings for another referral to the European Court of Justice.



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Legal 500 Germany 2019

Patent law: dispute resolution

Preu Bohlig & Partner impresses with ‚highly efficient consulting‘, ‚business acumen‘ and ‚excellent service‘. After the change of Daniel Hoppe, who came from Harte-Bavendamm in July 2017 and since then has headed the Hamburg office, Matthias Hülsewig from Taylor Wessing further strengthened the patent practice in March 2018. In addition to the traditionally strong client base in German industry, including numerous DAX 30 companies, the firm is continuing to expand its international client base, paying particular attention to the Scandinavian countries and France as well as the USA, China and Japan. Our clients include Frey & Lau, Huawei and Swedish Biofuels. The ‚uncomplicated and effective‘ Christian Kau, who stands out for his ‚extremely quick comprehension‘, Christian Donle, Andreas Haberl, Alexander Harguth and Ludwig von Zumbusch are central contact persons.

Aid for infringement of a trade mark where a container bearing a trade mark is fitted with refills from another manufacturer

The Federal Supreme Court had with judgement of 17.10.2018 in the procedure with the file number: I ZR 136/17 in the following case:

The applicant is the proprietor of the Union trade mark reproduced below



The trade mark is registered in particular for paper towels and frames, holders and dispensers for paper towels. Under that trade mark, the applicant markets paper towel dispenser systems and matching paper towels on reels as refills for the catering, industrial and healthcare sectors. The towel dispensers are identified by the trade mark reproduced above.

The defendant operates a wholesale business for hygiene products and offers, inter alia, rolls of paper towels as refills for dispensers with the statement „also suitable for TORK dispensers“. The defendant's refill product is not marked with a trademark.

The Landgericht and the Oberlandesgericht dismissed the action and stated that the average consumer did not assume that a brand on a towel dispenser also referred to the towels. The public is now accustomed to the fact that, in the case of a large number of goods, there are basic devices whose operation requires the use of materials not supplied by the manufacturer of the basic device (such as printer ink cartridges, vacuum cleaner bags, coffee capsules, razor blades and liquid soap). The public therefore distinguishes between the marking of a device for dispensing goods and the marking of the goods themselves. It will only refer to a mar-

king affixed to the basic appliance if there is a specific reason to do so. There is no such specific reason in the present case, with the result that there is no infringement of the trade mark.

The BGH, on the other hand, took the view that a trademark infringement could not be denied on the basis of this reasoning. First of all, it should be borne in mind that the defendant's paper towel rolls do not have their own marks, but are unprinted. The function of the mark affixed to the dispensers as an indication of origin is therefore not relativised by a marking on the paper towel rolls. The consumer is not in a position to identify the defendant's unprinted paper towel rolls which are not visible to the eye. It should also be borne in mind that, unlike the examples cited by the Court of Appeal, such as ink, toner, coffee capsules, vacuum cleaner bags, razor blades and liquid soap, the consumer does not, in the event of a dispute (the rolls of paper towels), replace the refills himself or have them replaced. Rather, the new filling of the towel dispensers takes place outside his area of experience. The consumer himself regularly finds the already filled towel dispensers in the washrooms he uses. In that case, however, the consumer would not already know from the refilling process itself that the product was not the original refill from the manufacturer of the container and the trade mark proprietor.

In addition, the BGH still had to deal with the fact that it was not the defendant itself but its customers who fitted the towel dispensers with the paper towel rolls. It was therefore not the defendant but its customers who carried out the direct infringing act.

The BGH ruled that in the present case the defendant would be liable for aiding and abetting a trademark

infringement. It is well known that the question as to whether someone has participated as a perpetrator, accomplice, instigator or accomplice in an unlawful act of a third party is assessed according to the legal principles developed in criminal law. In addition to an objective treatment of the aid, the so-called accessory liability presupposes at least a conditional intent with regard to the principal offence, which must include the awareness of illegality (so-called double accessory intent). In the opinion of the BGH, these prerequisites were fulfilled here. Finally, the defendant offered and distributed the paper towel rolls complained of with the note „suitable also for TORK dispensers“. She had wanted her paper towel rolls to be filled into the plaintiff's towel dispenser as well and had thus at least accepted the fact that the plaintiff's trademark had been infringed (conditional intent).

Conclusion: If the defendant had provided the paper towel rolls offered and sold by it with its own trademark, the BGH would possibly have denied a trademark infringement.



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Chambers Europe 2019

Preu Bohligh & Partner in der Kategorie "Intellectual Property: Patent Litigation" und „Trade Mark & Unfair Competition“ gelistet:

What the team is known for: Well known for expertise in patent litigation, regularly acting for clients from the technology, energy and manufacturing sectors. Represents clients in patent infringement and parallel validity proceedings, and often advises on employee invention disputes. Assists with licence enforcement and trade secrets matters. Also offers capabilities in trade mark and unfair competition matters.

Strengths: clients appreciate the solution-focused approach, stating: „The team offers very quick answers and understand our problems easily and quickly.“

Work highlights: Acted for Huawei on patent infringement cases and patent validity proceedings.

Notable practitioners: According to clients, Andreas Haberl is „a thorough, eloquent and proactive lawyer who thinks on behalf of the client and delivers things on time.“ He advises clients in patent infringement, licence enforcement and preliminary injunction proceedings. He has several clients from the automotive parts industry. Christian Donle represents clients in patent litigation and infringement cases, with a particular focus on the technology and biotechnology sectors. One client reports the „for an important and critical case I would go to Donle“ and highlights his ability to co-ordinate cases. Donle also advises on patent assignment disputes.

Transfer of Priority Rights in the Light of Recent Decision of German Federal Court of Justice¹

In the judicial enforcement of patents claiming priority of a previous application, it is often in dispute whether the priority has been properly claimed. The question arises if the applicant of the priority application and the applicant of the subsequent application are not same. The answer to this question may be of extraordinary importance. For instance, in the case of US priorities, the first filer and the second filer are often not identical. The reason for this can be found in US law from the time prior to the so-called „America Invents Act.“ US patent applications could only be filed by the inventor(s) themselves, even if a third party, such as the employer, was entitled to the rights to the invention.

I. General Aspects of the Priority Right

The transfer of the priority right generally presupposes that it occurs within the priority year. The date to which a patent application refers for determining the state of the art could be set back by one year if it is preceded by a first application from which a priority right can be duly deduced. The protection of the applicant in terms of priority is one of the most important mechanisms under the Paris Convention for the Protection of Industrial Property. For European patent applications, this mechanism is set out in Articles 87 et seq. of the EPC. The priority is of great benefit for the applicant. It protects him or her from any harmful prior art made available to the public between the filing date of the priority application and the subsequent European application.

However, the priority right must be actively claimed by the applicant under Article 88(1) EPC. The effects of the priority right will not materialize without declaring to the patent office that the priority of a previous application is claimed. The ineffectiveness of the priority is often discovered when the patent is enforced, i.e. at a time when a correction of the defect is no longer possible.

This question was raised in a recent decision of the Federal Court of Justice of 4 September 2018 (X ZR 14/17 „Drahtloses Kommunikationsrecht“).²

According to a prevailing European view, the priority right emerges from the act of filing the first application. Consequently, the filer of the first application acquires the priority right. This does not necessarily coincide with the right to the invention. If the inventor and the applicant of the first application are identical, the priority right would not follow from the inventor's legal position; rather, it emerges through the inventor's acting as the first applicant. The right to the invention and the priority right are thus independent rights.

Article 87 EPC assumes that the priority right is transferable by legal transaction. At least under German law, the holder of the first application and the subsequent applicant entitled to the priority do not necessarily have to be the same person. The priority right can thus be transferred to third parties as an isolated asset without any change occurring in the ownership of the first filing. To demonstrate the distinction between priority right and inventor's right, commenters in the literature often refer to the fiduciary relationship: If the applicant of the first application is a trustee, he is entitled to the priority right due to the act of filing the first application. On the other hand, the trustor who is materially entitled to the subject-matter of the application does not acquire that right.³

However, in the absence of an explicit provision in an agreement concerning the transfer of the rights to the invention⁴, one can in principle assume that the right to claim the priority has tacitly been transferred together with the rights to the invention. The latter, however, is only one possible interpretation of an agreement in the context of special circumstances. The interpretation

¹Federal Court of Justice of 4 September 2018, X ZR 14/17 – „Drahtloses Kommunikationsnetz“, online database of the Federal Court of Justice.

²Federal Court of Justice of 4 September 2018, X ZR 14/17

³Grabinski, in Benkard EPC, 3rd ed. 2018, Art. 87 Rn. 3; Keukenschrijver, Mitt. 2001, 233 f.

⁴see e.g. Federal Court of Justice, GRUR 2013, 712 marginal 14 ff – „Fahrzeugscheibe“

could well also result in the priority right being transferred separately from the right to the invention.⁵ However, the substantive requirements to be met by the transfer or transferability of the priority right may vary depending on the applicable law.

II. Applicable National Law

The first question that arises in transnational cases is under which law the transfer of the priority right is to be addressed. The answer to that question is controversial so far. A narrow view required the written form of Art. 72 EPC for the transfer of the priority right. This was decided in T62/05. Today, the view expressed in T62/05 appears to be outdated. A more recent decision by the Board of Appeal of the EPO no longer intends to uphold the proof requirements of Art. 72 EPC.⁶ But, the reference for the applicable law remains disputed. In fact, there are three possibilities:

- the law of the subsequent application, i.e. the application of the law of the state where the subsequent application is filed, or
- the law of the state where the first/priority application was filed, or
- the law applicable to the legal relationship between the assignee and the assignor of the priority right, i.e. the law of the contract.

A reference to the law of the state where the subsequent application has been filed seems to be an inappropriate approach.⁷ In fact, at the time of filing of the first application, in most cases the countries for which a subsequent filing is to be made have not yet been determined. The recourse to the law of the state of the subsequent filing would lead to legal uncertainty. The law applicable to an existing right could only be esta-

blished retrospectively, depending on the country in which the subsequent application is made.

In T205/14, the Board of Appeal of the EPO argued that the transfer contract should represent the constituting reference for determining the applicable law. According to the Board of Appeal, the reference to the law of the contract shall serve as reference because the parties are familiar with the laws of their legal relationship. This argument is based on practical considerations. It must thus not necessarily be decisive.

The approach of the Board of Appeal in T205/14 seems, at least at a first glance, to be inconsistent with the German case-law. In the “Fahrzeugscheibe” decision, the Federal Court of Justice⁸ takes the view that the laws of the state in which the first filing was made shall be used as the point of reference. In the „Drahtloses Kommunikationsrecht“ decision of 4 September 2018 (X ZR 14/17), that approach is not explicitly abandoned. Nevertheless, the Court relativizes its previous view well to the effect that, although the laws of the state of the first application shall apply to the „transferability and the applicable formal and other provisions on effectiveness of the transition“, the transaction itself must however be assessed in accordance with the respective laws of the contract, including the employment statute in case of an employer-employee relationships. Thus, the case-law of the Federal Court of Justice considerably approximates the case-law of the EPO.

The Federal Court of Justice’s “differentiating” approach, which refers to the laws of the state of the first application as well as to the laws of the contract, as set out in the „Drahtloses Kommunikationsrecht“ decision, is quite understandable. In fact, situations are conceivable in which recourse to the law of the state of first application makes sense. In France, for example, the priority right cannot be transferred independently

⁵OLG Düsseldorf, I-2 U 46/17, Urt. V. 06.12.2012, para. 45: “the distinction between the right to the invention and the formal position resulting from the application represents the cause that the claiming of an employee-invention by the employer (§ 7 ArbEG) leads to a transfer of the right to the invention, but not of the protection rights based on it”; Federal Court of Justice, X ZR 72/10, p. 17 – „Initialidee“.

⁶EPA - T205/14, n° 3.6.3; Federal Court of Justice, GRUR 2013, 712 “Fahrzeugscheibe”; Federal Court of Justice, decision of 4 September 2018, X ZR 14/17, „Drahtloses Kommunikationsnetz.“

⁷EPA-T205/14, n° 3.6.4.

⁸Federal Court of Justice, GRUR 2013, 712, “Fahrzeugscheibe.”

of a domestic first filing.⁹ This special situation cannot be ignored in the analysis, while the legal relationship between the assignee and the assignor of the priority right is governed by the laws of the contract. In most cases, German law will not apply to the priority right and its transfer. If a US application serves as priority for a subsequent application, US law will apply in most cases. US law has then to be applied by German courts. While an employment agreement falling under US law may often be interpreted as meaning that the employee must assign all rights to his employer, this does not necessarily mean that the assignment automatically takes place. In practice, oftentimes such agreements are unclear and only relate to the US situation. This opens the door for challenging the priority right.

III. Temporal Aspect and Content of the Transfer

The effective exercise of the propriety right presupposes that the transfer of the priority right has taken place within the priority year. The transfer may only occur from the date when the priority right emerges, i.e. the date of filing of the first application. Before this date, there is no right that could be transferred. On the other hand, the priority right expires irretrievably at the end of the priority year. It will then no longer exist as a right and thus can no longer be transferred. An entitlement that is missing when the priority is claimed can therefore not be „restored“ by agreement(s) after the priority year has expired.¹⁰

⁹Art. L 614-14 CPI: "The French patent application or the French patent and the right of priority for the filing of a European patent application cannot be transferred independently of each other."

¹⁰EPA - T 62/05; EPA - T 788/05; Federal Court of Justice, GRUR 2013, 711, "Fahrzeugscheibe"



Chambers Europe 2019

Preu Bohligh & Partner in der Kategorie "Life Sciences" gelistet

What the team is known for: Compact life sciences practice with a following of long-standing clients in the pharmaceuticals sector. Experienced handling regulatory advice relating to advertising law and unfair competition, while also representing clients in patent infringement and enforcement proceedings. Offers further assistance with marketing authorisations and product classifications.

Strengths: One client values the firm for its „reliable expertise, high responsiveness and clear answers.“

Work highlights: Represented a generics manufacturer in appeal proceedings brought by an originator company.

Notable practitioners: Peter von Czettritz represents a range of clients in litigation, including those before the ECJ, concerning generics and alleged misleading advertising. He also assists with product classification issues and wins praise from clients who state he is „very quick to respond“, and add: „He is very convincing and to the point in court proceedings.“

According to the EPC rules, the declaration of priority can also be made after this date, i.e. within 16 months of the (earliest) first filing. However, this time limit concerns the formal procedure of claiming the priority right. It does not correlate with the substantive effectiveness of the transfer of the priority right. The priority year is the period during which the priority right must have been transferred. The transfer of the priority right could also take place after the filing date of the subsequent application, but only on condition that the transfer is still effectuated in the current priority year. It should be noted, however, that a dominant view requires that the transfer must necessarily be made before the subsequent application is on file.¹¹ Even though a transfer of the priority right, which was completed during the priority year, seems to be sufficient to cure a missing entitlement when filing the subsequent application, it is recommendable to have completed an assignment in writing which needs to be signed and dated before the filing date of the subsequent application. In a single case the Federal Patent Court¹² assumed that the transfer of the priority right was still possible even after the priority year, namely as long as the declaration of priority can still be made. However, this view is contrary to the clear wording of Article 87 EPC.

The effectiveness of the transfer of the priority right depends on the applicable law. Insofar as German law applies to the underlying legal relationship in accordance with the above criteria, the priority right is freely transferable, even without the application establishing the priority. The provisions of §§ 398, 413 of the German Civil Code can be applied to such transfer. The transfer must have taken place within the priority year. This is not questioned in literature and jurisprudence,¹³ except in the above-mentioned single decision of the Federal Patent Court.¹⁴

The priority right must be proven by the patent proprietor if the priority becomes an issue in the course of opposition or invalidation proceedings, for instance if

relevant prior art is found in the priority interval. According to general principles of procedural law, this obligation must be imposed on the patent proprietor.¹⁵ It is true that the priority right can also be transferred in an implicit manner. However, it is advisable to document the transfer of the priority right in a written document.

Also, in its recent decision, the Federal Court of Justice did not question that a transfer contract must be proven by the patentee. This case concerned the transfer of a priority right from an employee to the employer with subsequent transfer to a third party. The requirements for proving the conclusion of the transfer agreements seem to have been set low in favor of the patent proprietor in the case discussed there. The court found that the mere reference by the employee to a first US application including the overall circumstances and interests between the parties could be sufficient for an offer (declaration of intent) to transfer the priority right. As the mere reference to a first US application is nothing other than a report of knowledge, the overall circumstances and interests of the parties, including the special situation following the German employee-invention act were decisive for the court's conclusion.

Although the facts on which this decision is based have turned out well for the patent proprietor, one should never neglect the contractual side of the transfer to avoid the creation of an irreparable defect in the application procedure which cannot be cured anymore in subsequent infringement proceedings.



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¹¹Benkard/Grabinski, EPC, 3rd ed. (2018), Art. 87 Rn. 4 with further references

¹²Federal Patent Court, Decision of 28.10.2010, Mitt. 2011, 259.

¹³Federal Court of Justice, decision of 4 September 2018, X ZR 14/17 „Drahtloses Kommunikationsnetz“; OLG Düsseldorf, decision of 6 December 2012 - 2 U 46/12, juris recital 44; Benkard/Grabinski, EPC, 3rd ed. (2018), Art. 87 marginal 3

¹⁴Federal Patent Court, Decision of 28.10.2010, Mitt. 2011, 259.

¹⁵Benkard/Grabinski, loc. cit., Article 87 para. 25; OLG Düsseldorf, judgment of 6 December 2012 - 2 U 46/12, juris para. 56; Singer/Stauder/Spangenberg, EPC, 6th edition, Article 87 para. 51; EPO-J 19/87

Use of a trademark by removal of said trademark

In its decision of 25 July 2018 (Mitsubishi / . Duma), the European Court of Justice (ECJ) ruled that the complete removal of a third party's trademark from original goods in customs warehousing procedures for the purpose of placing the goods on the market in the European Economic Area (EEA) under own trademarks constitutes a trademark infringement. The decision of the ECJ is reproduced in GRUR 2018, 917 - 921.

The decision of the ECJ was based on the following facts:

Duma Forklifts from Belgium purchased forklifts made by Mitsubishi on the world market outside the EEA. Duma Forklifts moved these forklifts to a so-called customs warehouse, where it removed the Mitsubishi trademarks from the forklifts and attached its own markings. Only then did Duma Forklifts move the remodelled forklifts to the EEA and distribute them there without reference to the original manufacturer or use of the Mitsubishi brands.

The Mitsubishi parent company is the owner of various EU-Trademarks „Mitsubishi“. Mitsubishi brought an action to the Belgian courts against Duma for infringement of those Union trademarks by placing on the market the forklifts modified as described above. The commercial court in Brussels rejected the complaint. Following Mitsubishi's appeal, the Brussels Court of Appeal stayed the proceedings and referred the question to the European Court of Justice as to whether the complete removal of foreign trademarks could constitute the use of such trademarks.

With regard to German trademarks, the Federal Court of Justice (FCJ) has repeatedly ruled that the complete removal of a third-party's trademark (so-called „de-branding“) cannot be prohibited by means of trademark law (e.g. FCJ GRUR 2008, 160 - Cordarone, para. 24). However, the de-branding and subsequent affixing of one's own trademarks to market the goods under these trademarks (so-called „re-branding“) may, under certain circumstances, be anti-competitive as a sales or advertising impediment or because of misleading information about the commercial origin of the goods (BGH GRUR 2004, 1039, 1041 - SB-Beschriftung). In the pre-

sent proceeding, the Advocate General of the ECJ also referred to this case law of the FCJ as well as the legal situation in other national trademark laws of EU member states. By interpreting the wording, the systematics and the telos of the term „use“, the Advocate General concluded in his comments to the Court that the complete removal of a trademark cannot constitute use of a trademark.

Surprisingly, the ECJ took a different view. In its decision, the ECJ focuses in particular on the - in comparison to the core function of certificate of origin - other functions of trademarks, in particular the guarantee of the quality of the goods and the communication, investment and advertising functions of a trademark. Rightly so, these additional trademark functions may be impaired if a third party sells a product originally originating from the trademark owner under his own trademark as his own efforts and performance. However, the ECJ saddles the horse from behind: Because de-branding or re-branding can impair these further trademark functions, any active action by the infringer for the purpose of first placing the trademark on the market in the EEA which impairs these further trademark functions should suffice as a prohibited use of a trademark. In the opinion of the ECJ, the removal of a trademark, even more so in a customs warehouse, i.e. outside the scope of protection of the EU-Trademark, and the subsequent placing on the market in the EEA of the goods modified in this way constitutes use of the (completely removed) trademark in the EU.

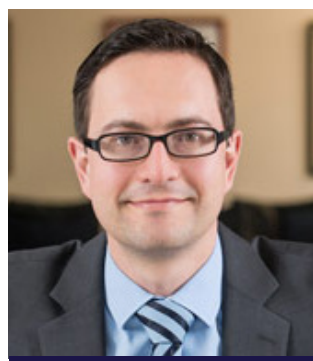
According to the ECJ, the trademark infringement should also be regardless of the fact whether or not the target groups in the EU subsequently recognize the branded goods as such from the production of the original trademark owner. Re-branding deprives the origi-

nal trademark owner of the opportunity to bind customers to the quality of his goods by using his signs on his products and renders corresponding investments in the trademark image worthless. What is astonishing about this reasoning is that the isolated consideration of the impairment of individual trademark functions obviously takes place without prior examination of the question of the use of the trademarks impaired by this actions.

It remains to be seen whether the ECJ has taken this view only for a specific special case. However, it may also be possible to transfer the principles of the decision to other constellations:

It is conceivable, for example, that the removal of a trademark in non-EU countries (for which the EU-Trademark does not grant any protection) could already be regarded as (trademark infringing) use of the EU-Trademark if the removal of the trademark takes place for the purpose of the subsequent planned placing on the market in the EEA. Furthermore, a trademark infringement may also be affirmed in the event that the original trademark is removed from goods already placed on the market in the EEA by the trademark owner. This would very significantly affect car-tuning and parallel

imports of medicines. Finally, it remains to be seen whether the FCJ in Germany will also follow the ruling practice of the ECJ. Ultimately, German national law is based quite considerably on the EU Trademark Directive. Recently, the Trademark Law Modernization Act has brought further adaptations of EU law into German Trademark law. In any case, the further decision-practice of the ECJ in these constellations remains intriguing.



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Legal 500 Germany 2019

Regulatory law - health sector

Preu Bohlig & Partner is one of the top addresses for regulatory advice in the healthcare sector. Practice Group Leader Peter von Czetztritz has particularly extensive experience in regulatory third party opposition proceedings, but manages a broad range of mandates which, in addition to pharmaceutical and competition law, also covers certification issues under medical product law and comprehensive mandates under pharmaceutical law, including mandates influenced by regulatory approval law. Smaller areas of focus include food and cosmetics law as well as product liability law and compliance. HEXAL, kohlpharma and STADA Arzneimittel belong to the illustrious client base.

Mannheim Regional Court, Judgment dated 28.09.2018 – Docket Number 7 O 165/16

In a recent decision, the Mannheim Regional Court made a further important judgment on standard essential patent (SEP-)litigation in Germany.

IP Bridge sued HTC in Germany for infringement of the European Patent EP 2 294 737. The EP'737 was originally applied for by Panasonic and subsequently assigned to IP Bridge. EP'737 belongs to a portfolio of patents declared essential to the LTE-standard (in the following: SEP-portfolio).

Facts and Circumstances of the Case

After a first contact in the end of 2014, IP Bridge and HTC negotiated the terms of a licensing agreement for the SEP-portfolio. After almost two years of eventually unsuccessful negotiation, IP Bridge started a patent infringement suit in September 2016 claiming information and accounting as well as a determination of liability for damages. Initially, IP Bridge did not file a motion for an injunction. Prior to filing the action, IP Bridge provided two licensing offers and HTC subsequently made two counter-offers that IP Bridge rejected as too low.

After having filed the patent action, IP Bridge provided another two licensing offers in April 2017 and February 2018, respectively, and informed the Mannheim Regional Court about the latest offer five days after its provision. Subsequently on 11 April 2018 and after the conclusion of a non-disclosure agreement, IP Bridge further provided HTC with third-party licensing agreements concerning the SEP-portfolio and set a one-week deadline for HTC until 18 April 2018 to accept the latest licensing offer. HTC, in turn, informed IP Bridge that an external expert was entrusted with the analysis of the third party licensing agreements and that more time would be required for a reaction/counter-offer.

On 24 April 2018 IP Bridge again requested HTC to react on the latest licensing offer (this time) until 7 May 2018. HTC in turn replied on 2 May 2018 and brought forward that HTC plans to provide an answer as soon as the external expert opinion is finalized.

On 15 May 2018, 22 business days after the provision of IP Bridge's (complete) offer, IP Bridge filed an additional motion and asked the Court to grant an injunction. The oral hearing of the case took place on 13 July 2018. After the oral hearing IP Bridge provided another licensing offer on 27 July 2018 and suggested a stay of proceedings if the Court refuses to consider this latest offer. HTC, however, did not file a respective motion for a stay of proceedings with the Court.

The Mannheim Regional Court's Decision

The Mannheim Regional Court held EP'737 to be infringed and refused to stay the proceedings with a view to a parallel nullity action brought forward against EP'737 in Germany. The Court ordered that HTC has to give information, render accounts and determined that HTC is liable for damages. The Court, however, refused to grant an injunction because of HTC's successful FRAND-defense. It dismissed IP Bridge's patent suit in this regard.

The Court opined that EP'737 provides for a dominant position in the market. The LTE-technology is not substitutable with technology of prior standards since the LTE-technology offers substantially faster data transmission.

IP Bridge, however, did not fulfill its duties under the ECJ-decision Huawei vs. ZTE (docket number C-170/13). IP Bridge conduct was, therefore, not FRAND.

IP Bridge submitted its last (complete) licensing offer on 11 April 2018. The Court considered the timeframe of 22 business days from the provision of this licensing offer until IP Bridge's filing of the additional motion for an injunction (15 May 2018) to be too short for HTC to prepare an adequate reply/counter-offer.

The Mannheim Regional Court considered IP Bridge's behavior in this regard to be abusive. If the SEP-holder files a motion for an injunction without fulfilling its FRAND-related obligations beforehand, the filing of the patent action remains abusive if and as long as the SEP-holder does not make sufficient efforts to create a "negotiation situation without any pressure". The German Civil Procedure Rules offer such a possibility, e.g. in the context of the suspension of a legal dispute pursuant to Section 251 German Civil Procedure Rules. IP Bridge, however, did not file a respective motion in this regard. The mere suggestion of such a stay was in the eyes of the Court not sufficient under the German Civil Procedure Rules.

The Decision's overall Context

It is currently debated in Germany whether and if in which timeframe the SEP-proprietor is entitled to still make licensing offers in ongoing litigation after he has filed the motion for an injunction.

The 7th Chamber of the Mannheim Regional Court pursues a (comparably) restrictive line. Its primary concern is the „pressure situation“ caused by the late submission of a FRAND licensing offer in the ongoing litigation. The Courts in Düsseldorf appear to be more forthcoming in this regard since they basically allow the SEP-proprietor to provide licensing offers and/or necessary information in the ongoing litigation (see Düsseldorf Court of Appeal, indicative Court order dated 17 November 2016, docket number I-15 U 66/15). It remains to be seen whether the German Courts will develop a common approach in this regard in the (near) future.

In any case, the SEP-owner is well advised to at least ensure that the SEP-user is granted an adequate "review and reaction"-time if licensing offers are provided, in particular in already on-going SEP-litigation. As a rule of thumb, a period of three months may be considered to be adequate since the Mannheim Court's 7th Chamber in the case at hand considers the period between the complete FRAND licensing offer (11 April 2018) and the oral hearing (13 July 2018) as such to be sufficient for a careful examination.



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The current „Lyrica“ decision of the ECJ of 14.2.2019

Case C-423/17

The decision of the ECJ

The background to the request was that Warner-Lambert Company (WLC) had obtained a marketing authorisation under the centralised procedure for the drug Lyrica with the active ingredient pregabalin for three indications, two of which were no longer covered by a patent, but the patent for the third did not expire until 17 July 2017. Accordingly, after obtaining the generic marketing authorisation and before marketing the generic drug, the generic company wanted to delete the indication still covered by the patent from the summary of drug characteristics (SmPC) by „carve-out“ („skinny labeling“), which the Dutch authority rejected insofar as it published all indications.

However, the originator WLC took action and the Dutch court first seized decided that the action of the Dutch licensing authority CBG was inadmissible, as it was incompatible with the duty of care incumbent on a licensing authority. The CBG in turn challenged this decision, which led to the question referred to the ECJ by the Dutch Court of Appeal.

The national court asked whether Article 11(2) of Directive 2001/83 must be interpreted as meaning that, in a marketing authorisation procedure for a generic medicinal product, communication to the competent national authority by the applicant or holder of a marketing

authorisation for a generic medicinal product of the package leaflet or summary of the product characteristics of that medicinal product which does not include any reference to indications or dosage forms which were still covered by patent law at the time that medicinal product was placed on the market constitutes a request to limit the scope of the marketing authorisation of the generic medicinal product in question.

This question was answered in the affirmative by the ECJ. The ECJ has based its decision on the fact that according to Art. 6 of Directive 2001/83 a medicinal product may only be placed on the market within the EU after a marketing authorisation has been issued by the competent authority and that according to Art. 6 para. 1 subpara. 2 of Directive 2001/83 any additional strengths, pharmaceutical forms etc. as well as all variations and extensions must also be approved. Furthermore, the ECJ points out that it follows from Article 8(3)(j) and Article 21(2) of Directive 2001/83 that the package leaflet and the SmPC are part of the marketing authorisation, that the medicinal product placed on the market must comply with this marketing authorisation, which must be reflected in the SmPC and that the marketing authorisation holder may not change the package leaflet and the SmPC without notifying the competent authority accordingly in order to obtain its authorisation.



Best Lawyers Germany 2019

Peter von Czettritz is listed as
„Best Lawyer in Health Care Law and Pharmaceuticals Law“

In view of the requirement of identity between the reference medicinal product and the generic medicinal product under Article 10(2) of Directive 2001/83 and the possibility provided for in Article 11(2) of Directive 2001/83, of limiting the scope of the SmPC of the generic medicinal product to indications or doses not protected by patent law, the ECJ considers that that affects the scope of the marketing authorisation. The competent authority must amend the marketing authorisation in order to ensure compliance with the SmPC. The SmPC communication, which does not include certain indications, constitutes a removal of therapeutic indications to be submitted by the marketing authorisation holder as a minor variation of Type IB under Article 9 of Regulation 1234/2008. Once the patent protection has expired, the marketing authorisation holder can apply for the inclusion of the indication that was still covered by patent protection within the scope of a Type II variation notification pursuant to Article 10 of Regulation 1234/2008.

Impact on practice

With this decision, the ECJ ultimately confirmed a practice that had functioned well for many years, taking into account the reconciliation of interests of all parties involved as intended by the legislator with the generic provisions, even though perhaps not all parties involved were aware of how this handling should be classified in regulatory terms.

Already from the CMDh Question & Answers Usage Patents (CMDh/279/2012) of October 2012 it becomes clear that the decision of the European Court of Justice is nothing substantially new. So far, skinny labelling has been practised unanimously across all Member States to differentiate between regulatory approval and marketing in individual Member States, which may have different patent terms.

Accordingly, most regulatory authorities considered the deletion of the patent-protected indication to be a variation. In Germany, the BfArM has provided the following information on this question on its homepage:

„The inclusion of information on already approved patent protected fields of application must be applied for as Type IB variation of the category C.I.z after expiration of the patent protection - as a change to the informative texts“.

Even after the current ruling of the European Court of Justice, there is no need to change this practice in Germany, as the remarks in recital 46 of the judgment only reflect a non-binding assessment of the European Court of Justice in this respect. Only the answer to the question referred for a preliminary ruling reproduced at the end of the judgment according to para. 50 has the force of res judicata and this merely results in the fact that the transmission of the package leaflet and the SmPC, in which a patent-protected indication is not indicated, is to be regarded as an application for restriction of the scope of the marketing authorisation.

How that restriction of the scope of the marketing authorisation is to be reversed is clear from Regulation No 1234/2008 and, since the indication has already been examined once, it is appropriate to make a variation of type IB.



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¹ https://www.bfarm.de/DE/Service/FAQ/_functions/Arzneimittelzulassung/folgeverfahren/aender/variareg/E_klassifizierung_variations/variareg_E_table.html

Current Lectures and Seminars

Below you find a list of current lectures and papers by our lawyers:

<i>Informationen on seminar activities</i>	<i>Date, Place</i>	<i>Speaker(s)</i>
„Blockchain und IP“	21. Mai 2019, Hyperion Hotel, München	Dr. Alexander Harguth, Dr. Thomas Jetzfellner, Siemens AG; Dr. Volker Metzler, Klunker IP
„Abgrenzungsvereinbarungen im Markenrecht“	24. Mai 2019, Best Western Premier Hotel, Rebstock, 97070 Würzburg	Jürgen Schneider, Dr. Volkmar Bonn
Fachtagung - „Arzneimittelnachahmer“, FORUM-Seminar*	11. Juli 2019, Berlin	Dr. iur. Alexander Meier, Tagungsleiter
„The EU Pharmaceutical Legal Framework“	09. September 2019, Downing College, Cambridge, UK	Dr. iur. Alexander Meier
„Das neue Europäische Patentsystem“	14. November 2019, Hotel Victoria, Nürnberg	Andreas Haberl, Konstantin Schallmoser

*if you are interested in the event, you will get 5% discount by booking through us.
Please contact info@preubohlig.de.

Preu Breakfast on the Trademark Law Modernisation Act

On 12 February 2019 another Preu breakfast took place in the Munich offices of Preu Bohlig & Partner.



The speakers, Ms. Astrid Gérard and Mr. Jürgen Schneider, both attorneys at law, presented some new regulations from the Trademark Law Modernization Act, which came into force on January 14, 2019, in view of the infringement process, in particular the introduction of the warranty trademark, the official revocation and nullity proceedings according to § 53 Trademark Act n. F. for proceedings as of May 1, 2020, the extension of the facts of § 14 Trademark Act, the so-called transit regulation according to § 14 a Trademark Act n. F., the new calculation of the grace period for use and the presumption of urgency for applications for an injunction under trademark law pursuant to § 140 (3) Trademark Act new version.

After a lively discussion at the end of the lecture, the participants had the opportunity to exchange ideas over coffee and snacks and to establish contacts.



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Second Preu Breakfast in Hamburg

In January, our Hamburg team once again invited their patent attorney colleagues to a Preu Breakfast.



About 20 guests attended the second Preu Breakfast at the hotel “Hafen Hamburg”. The head of our Hamburg office, Daniel Hoppe, gave a talk on the liability of patent attorneys. With an eye to the practice of the German courts, he pointed out how patent attorneys can control liability risks and avoid liability. He especially focused on the duties of patent attorneys in typical situations such as the registration of IP rights, the reaction to a warning letter, or litigation. Afterwards there was still plenty of time for personal conversation at the rich breakfast buffet. We would like to thank our guests for the great interest and the very good discussions!

The next Hamburg Preu Breakfast takes place on May 14, 2019. The topic of the talk will be the EU Trade Secrets Directive. We are looking forward to familiar and new faces!

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