PREU BOHLIG

Newsletter December

ISSUE 3/2019

New faces at Preu Bohlig

We are very delighted that the following colleagues have joined our office in 2019.

Dr. Alexander Meier
at the Munich office

Catharina Lutterbeck-Putzar
at the Berlin office

Til Quadflieg, M.A.
at the Hamburg office

Carl-Alexander Dinges
at the Hamburg office

Isabel Werner
at the Paris office

Milena Schwerdtfeger
at the Munich office

Kira-Christin Winkler, LL.M.
at the Düsseldorf office

German Act on the Protection of Trade Secrets – Part III: Scope of judicial non-disclosure measures

I. Introduction

The German Act on the Protection of Trade Secrets (Geschäftsgeheimnisgesetz – GeschGehG) entered into force on April 26, 2019.[1] It implements Directive (EU) 2016/943 (Trade Secrets Directive).[2] As stipulated in the Directive, the GeschGehG inter alia provides for specific procedural measures to prevent the disclosure of trade secrets during the course of legal proceedings. The classification of certain information as confidential (Sec. 16 (1) GeschGehG) prohibits the parties to disputes concerning trade secrets and any other person participating in such disputes to use and disclose the information in question, and all participants are ordered, with the threat of penalties, to keep the information confidential (Sec. 16 (2) GeschGehG).[3] The right of third parties to inspect the court files pursuant to Sec. 299 (2) of the German Code of Civil Procedure (Zivilprozessordnung – ZPO) is restricted. Sec. 19 (1) GeschGehG allows for a complete exclusion of third parties and for a restriction to certain people of a party who may receive knowledge of the proceedings' content and course. Finally, according to Sect. 19 (1) GeschGehG, the court has a broad discretion to order further specific measures that it considers necessary for achieving the purpose of the non-disclosure of the information in question.

As the protection of trade secrets can be relevant in various procedural constellations, it is very important to clarify the scope of Sec. 16 et seqq. GeschGehG.

II. Scope of Sec. 16 et seqq. GeschGehG

The procedural non-disclosure measures are supposed to be admissible in "trade secret disputes" only. According to the legal definition in Sec. 16 (1) GeschGehG, trade secret disputes are actions in which claims under the GeschGehG are asserted. This definition poses many questions. We will address the following questions:

- Does Sec. 16 (1) GeschGehG require a principal action?
- Does „claims under the GeschGehG" only refer to the tortious claims laid down in the GeschGehG itself?
- Can judicial non-disclosure measures only be ordered in proceedings before the civil courts?
- Can only parties to the proceedings request the classification of a piece of information as confidential, or are other participants also entitled to do so?

1. Standard of interpretation: Trade Secrets Directive

Sec. 16 et seqq. GeschGehG have to be interpreted in the light of the Directive and its intentions.[4] The limits of an interpretation in conformity with an EU directive are the same as with a judicial interpretation of the law.[5] If the wording, genesis, overall context and purpose of the law allow multiple interpretations of which at least one is consistent with constitutional or rather EU law, an interpretation that is consistent with EU law is appropriate. However, the interpretation in conformity with an EU directive must not contradict the recognizable

[1] Federal Law Gazette (Bundesgesetzblatt - BGBl.) I 2019, pp. 466 et seqq.; grounds of the law in Bundestag document (Bundestagsdrucksache - BT-Drucks.) No. 19/4724, pp. 19 et seqq.

[2] Directive (EU) 2016/943 of the European Parliament and the Council from 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

[3] Apel/Walling, DB 2019, 891, 898.

[4] Cf., inter alia, Ruffert, in: Callies/Ruffert, EUV/AEUV [TEU/TFEU], 5th Ed. 2016, Art. 288 AEUV [TFEU] margin no. 77.

[5] Cf. BAGE [Federal Labor Court decision] 105, 32.

intent of the national legislature. The content of a national provision that is clear in its wording, system and meaning cannot be turned into its opposite by way of interpretation.[6]

2. Interpretation of Sec. 16 (1) GeschGehG

a) No restriction to actions in the narrow sense

There is no support for a restriction to principle actions in the sense of Sec. 253 ZPO in the wording of Art. 9 of the Directive. On the contrary, it follows from (i) recital (26) of the Directive, which mentions the goal of creating quick, effective, and preliminary protective measures, (ii) from the preliminary and preventative measures required by Art. 10 of the Directive, and (iii) from the systematic position of Art. 9 „before the parenthesis" in the „General Provisions" of Chapter III of the Directive that non-disclosure orders are also available in interim proceedings. The wording of Sec. 16 (1) GeschGehG does also not imply a restriction to principal actions.

The mention of „actions" serves to define the term "trade secret dispute". It includes all proceedings connected with a relevant dispute, including preliminary injunction and enforcement proceedings.[7] This also becomes apparent when looking at the parallel provisions regarding the special protection rights. The term „action" is used to define "patent disputes" in Sec. 143 (1) of the German Patents Act (Patentgesetz - PatG), "trademark disputes" in Sec. 140 (1) of the German Trademark Act (Markengesetz - MarkenG), and "design disputes" in Sec. 52 (1) of the German Design Act (Designgesetz - DesignG).[8] It is generally accepted that the term "action" must be interpreted broadly in this context.[9] At the very least, however, an analogous application of Sec. 16 GeschGehG to these types of proceedings should be endorsed.[10]

b) No restriction to specific claims

According to Art. 6 (1) and recitals (6) and (10) of the Directive, the Directive strives to align civil remedies for infringements of trade secrets in the member states. The Directive does not contain a limitation to the assertion of specific claims under a particular law or act. Art. 9 of the Directive does especially not indicate that the protection of trade secrets shall only be possible in proceedings in which measures under Art. 6 or sections 2 and 3 of Chapter III of the Directive, which have mostly been codified in the GeschGehG, are pursued.[11]

However, because of its clear wording, it is difficult to interpret Sec. 16 (1) GeschGehG in conformity with the Directive in this regard. One could argue that both claims under the GeschGehG as well as more general rights conferred by the GeschGehG, such as the ownership of a trade secret, fall under Sec. 16 (1) Gesch-

[6]Cf. BAGE [Federal Labor Court decision] 105, 32.

[7]See also Kalbfus, WRP 2019, 692, 693; McGuire, in: Büscher, UWG [Act Against Unfair Competition], Sec. 15 GeschGehG margin no. 2; other view Druschel/Jauch, BB 2018, 1281, 1221; on the jurisdiction of the chambers for commercial matters cf. Wittschier, in: Musielak/Voit, 16th Ed. 2019, Sec. 95 GVG margin no. 3; on labeling disputes see FCJ GRUR 2012, 756 – Kosten des Patentanwalts [costs of patent attorney]; Thiering, in: Ströbele/Hacker/Thiering, MarkenG [Trademark Act], 12th Ed. 2018, Sec. 140 margin no. 8; on patent matters see OLG Düsseldorf [Dusseldorf Higher Regional Court] GRUR-RR 2010, 405 – Herausgabevollstreckung [restitution enforcement]; on analogous application see Grabinski/Zülch, in: Benkard, PatG [Patents Act], 11th Ed. 2015, Sec. 143 margin no. 6.

[8]This was phrased more accurately in Sec. 104 of the German Copyright Act (Urhebergesetz – UrhG), where copyright disputes are defined as „legal disputes" „through which a claim from a legal relationship regulated in this act is asserted."

[9]Cf. OLG Karlsruhe [Karlsruhe Higher Regional Court] Mitt 1977, 74 – Velemint (regarding trademark law).

[10]McGuire, in: Büscher, UWG, Sec. 16 GeschGehG margin no. 9.

[11]Ohly, GRUR 2019, 441, 450: France has also extended the protection of secrets to other proceedings; cf. Art. R 623-51 Code de la propriété intellectuelle.

GehG. An interpretation according to which protective measures may be ordered in proceedings in which rights resulting from the GeschGehG are pursued or defended would be in line with the Directive. This would also include claims other than the tortious claims codified in the GeschGehG,[12] such as claims for the preservation of evidence pursuant to Sec. 809, 810 of the German Civil Code (Bürgerliches Gesetzbuch – BGB),[13] or contractual claims such as claims under confidentiality agreements, license agreements or the like. Therefore, in conformity with the Directive, „claims under this act" (i.e. the GeschGehG) in Sec. 16 (1) GeschGehG means all claims and rights regarding a trade secret within the meaning of Sec. 2 no. 1 GeschGehG.

Since German courts can also be competent to decide disputes in which the substantive trade secrets law of another member state is applicable, claims under the national trade secrets provisions of other member states are covered as well, insofar as these claims would also exist under the GeschGehG.[14] In view of the harmonization intended by the Directive, trade secrets protected under the national legal provisions of other member states generally also fall under the term "trade secret" as defined in Sec. 2 no. 1 GeschGehG.

c) Broad interpretation of the term „asserting" claims

According to Art. 9 (1) of the Directive, non-disclosure orders are supposed to be possible in legal proceedings relating to a trade secret infringement of any kind. The wording of Art. 9 (1) of the Directive[15] should be interpreted autonomously and in view of the trade secret holder's need for protection and the Directive's goal to strengthen the protection of trade secrets. Therefore, the interpretation of the wording "proceedings relating to…" in Art. 9 (1) of the Directive must go beyond the narrower meaning of "matter in dispute" according to German law on civil procedure. Non-disclosure orders must thus also be available if the protection from the unlawful acquisition, use or disclosure of a trade secret concerns only a partial or sub-aspect of the proceedings.

Besides, Art. 9 of the Directive does not require that an infringement has already happened. Accordingly, Art. 10 of the Directive provides for preventative measures prior to a (possibly first time) infringement. For this reason, the scope of Art. 9 of the Directive should also cover cases in which a party to the proceedings first encounters the risk of an unlawful use or disclosure of a trade secret due to the proceedings themselves, for example if a party's defense requires the disclosure of a trade secret, even though initially, the proceedings did not concern a trade secret.

When interpreted broadly, the wording of Sec. 16 (1) GeschGehG complies with the Directive's requirements. According to the wording of Sec. 16 (1) GeschGehG, a "trade secret dispute" requires that „claims under the GeschGehG" are being asserted. However, this is also the case if the prevention of a threatened disclosure of a trade secret is sought; this follows from Sec. 6 clause 2 GeschGehG. Such a risk of disclosure can also occur if the owner of the trade secret is not the claimant/applicant. A defendant who owns a trade secret might, for example, be forced to disclose his trade secret in the course of legal proceedings in order to prevent losing the proceedings. This is because in German civil proceedings, defendants have to substantiate their pleadings, or because of the so-called "secondary burden of proof"; if the defendant does not comply with these procedural obligations, the claimant's allegations are deemed conceded, Sec. 138 (3) ZPO, so that the defendant might lose the proceedings.[16]

The wording of Sec. 16 (1) GeschGehG only complies with the stipulations of the Directive if its interpretation

[12]Other view Semrau-Bandt, GRUR-Prax 2019, 127, 128 et seq.

[13]Also Kalbfus, WRP 2019, 692, 693, margin no. 5; other view Druschel/Jauch, BB 2018, 1794, 1798.

[14]Similarly McGuire, in: Büscher, UWG, Sec. 16 GeschGehG margin no. 9.

[15]English version: „legal proceedings relating to the unlawful acquisition, …,"; French version: „une procédure judiciaire relative à l'obtention, …".

[16]On this point Deichfuß, GRUR-Prax 2012, 449, 453.

leads to the result that it is irrelevant for the non-disclosure order whether the claims concerning trade secrets are actively asserted or asserted in other ways, for example as an objection. The claims also do not need to be asserted by means of an action for performance. It is sufficient if the owner of the trade secret uses the procedural means available to him in order to protect his trade secret. This includes declaratory actions or interim declaratory actions. We will discuss the admissibility of (interim) declaratory actions in a separate article.

d) No restriction to civil court proceedings

The fact that recitals (6) and (10) and Art. 6 (1) of the Directive stress civil law protection of trade secrets does not necessarily speak for a restriction of Art. 9 of the Directive to civil proceedings within the meaning of the German legal understanding. Rather, the Directive should intend to protect civil legal positions regardless of whether they are the subject of civil disputes or other proceedings, as long as the proceedings concern the infringement of a trade secret, at least if the proceedings also serve to protect the civil legal position of the owner of the secret. Art. 9 of the Directive stipulates an effective protection of trade secrets, not only in civil proceedings, but in all proceedings and jurisdictions.

In addition, Art. 9 of the Directive does not provide for a restriction to court proceedings within the German meaning. Even though Art. 9 (1) of the Directive speaks of „legal proceedings“, i.e. court proceedings, the term has to be interpreted autonomously.[17] According to the case law of the ECJ on the term “court” within the meaning of Art. 267 TFEU, it must be an independent body on a legal basis with permanent and mandatory jurisdiction, that reaches its potentially binding decisions by applying legal norms and based on constitutional principles.[18] The decisive factor for qualifying as a “court” is that the body in question may be called upon to give a ruling in proceedings intended to arrive at a decision of a judicial nature.[19] However, this does not include criminal authorities such as the public prosecutor’s office.

Sec. 16 GeschGehG is also not limited to civil proceedings. Rather, Sec. 15 (1) GeschGehG implies that an assertion of claims shall not only be possible before the ordinary courts. Therefore, proceedings before labor courts or courts of other jurisdictions are not excluded.

An assertion of civil law claims under the GeschGehG outside of civil courts is, for example, possible in criminal adhesion proceedings pursuant to Sec. 403 et seqq. of the German Code of Criminal Procedure (Strafprozessordnung – StPO). However, the relation between Sec. 403 StPO, which is a rule of jurisdiction, and Sec. 15 GeschGehG is still unclear. Moreover, administrative courts might apply Sec. 16 GeschGehG. Sec. 1 (2) GeschGehG does not oppose this. Sec. 1 (2) GeschGehG does not exclude the assertion of civil trade secrets in a public law context, but only establishes the priority of public law provisions regarding the non-disclosure, acquisition, use, and disclosure of trade secrets. This priority only takes effect insofar as public law provisions are actually relevant and applicable in the case in question, which might first have to be clarified in proceedings before an administrative court in the individual case.

Administrative proceedings such as patent opposition proceedings pursuant to Sec. 59 et seqq. PatG or a trademark opposition proceedings pursuant to Sec. 42 MarkenG before the German Patent and Trademark Office come closer to adversarial civil proceedings before a court within the meaning of the case law of the ECJ than administrative proceedings before other administrative agencies. However, with its reference to legal actions, Sec. 16 (1) GeschGehG draws a line that one would cross by extending the provision’s scope

[17]ECJ, C-24/92, margin no. 15 – Corbiau; ECJ, C-96/04, margin no. 12 – Registry Office of Niebüll.

[18]Cf., inter alia, Ehricke, in: Streinz, EUV/AEUV, 3rd Ed. 2018, Art. 267 AEUV margin no. 29 with additional references.

[19]ECJ, C-182/00, margin no. 13 – Lutz GmbH; ECJ, C-178/99, margin no. 14 – Salzmann; Ehricke, in: Streinz, EUV/AEUV, 3rd Ed. 2018, Art. 267 AEUV margin no. 29 with additional references.

to extrajudicial proceedings. Another question – which we cannot answer here – is whether the Directive has a direct effect with regard to such proceedings so that non-disclosure orders must also be possible outside of court proceedings in the German legal understanding.

In extrajudicial proceedings such as criminal investigation proceedings or administrative opposition proceedings before governmental authorities that are not covered by the term „court" within the meaning of EU law, Sec. 16 GeschGehG is inapplicable and Art. 9 of the Directive cannot have direct effect.

e) No exclusion of third parties as trade secret owners

Finally, the Directive does not limit non-disclosure orders to the protection of parties in the proceedings. Rather, Art. 9 (1) of the Directive entitles an „interested party" to apply for the classification of a trade secret as confidential. As the parties to the proceedings will certainly be interested in keeping their trade secrets confidential anyway, the term „interested party" should be interpreted wider so that it covers anyone who has a legitimate interest in the issue of a non-disclosure order. This especially includes third parties who have reason to assume that the proceedings could result in a disclosure of their trade secrets.[20] Only the specific non-disclosure measures mentioned in Art. 9 (2) of the Directive are supposed to be ordered only upon

[20]Cf. Schlinghoff, WRP 2018, 666, margin no. 19.

request by a party to the proceedings; the interests of third parties are to be taken into account when deciding on such non-disclosure measures.

According to Sec. 16 (1) GeschGehG, any party to a dispute concerning trade secrets may request a non-disclosure order. It is unclear whether this refers to the formal term of „party" of the ZPO, i.e. only to such persons which desire legal protection in a trade secret dispute or against which this is being desired.[21] Sec. 19 (1) no. 1 GeschGehG could speak against this; according to this provision, documents presented or submitted by third parties can and should be kept from access by certain people as well. The orders under Sec. 16 et seqq. GeschGehG thus also serve to protect the secrets of participants which are not formal parties to the legal dispute. This also follows from Sec. 19 (1) clause 2 GeschGehG, according to which the right of the (other) participants to a legal hearing should be taken into account when deciding on whether to limit access to submitted or presented documents or to the oral hearing to a certain number of trusted persons. Therefore, there are no objections against an interpretation of Sec. 16 (1) GeschGehG in conformity with the Directive, according to which third parties are also generally entitled to request the order of non-disclosure measures.

However, a third party is not entitled to request orders under Sec. 16 GeschGehG in constellations in which the main parties have not made the protection of trade secrets subject of the proceedings, because they have no interest in the protection of trade secrets. Such cases are no trade secret disputes. A third party who is worried about the protection of its trade secret cannot turn the dispute into a trade secret dispute by requesting orders under Sec. 16 et seqq. GeschGehG. Such an interpretation would not be consistent with the wording and system of Sec. 16 et seqq. GeschGehG.

III. Conclusion

In conformity with the Directive, the term "trade secret dispute" in Sec. 16 GeschGehG has to be interpreted broadly. It is not limited to principal actions, but includes all proceedings in connection with a trade secret dispute, including proceedings for interim relief and enforcement proceedings. "Claims" within the meaning of Sec. 16 (1) GeschGehG are not only the tortious claims explicitly mentioned in the GeschGehG, but all claims and rights relating to a trade secret, even if they are asserted as an objection or by means of a (positive or negative) declaratory action. If there is a trade secret dispute, other participants such as interveners can also request the order of procedural non-disclosure measures under Sec. 16 et seqq. GeschGehG.

Daniel Hoppe
Lawyer, Partner
Hamburg
Tel +49(0)406077233-0
dho@preubohlig.de
Profil: Link Website

Dr. Axel Oldekop
Lawyer, Partner
Munich
Tel +49(0)89383870-0
axo@preubohlig.de
Profil: Link Website

[21] For the formal term "party", see Vollkommer, in: Zöller-ZPO, before Sec. 50 ZPO margin no. 2 et seq.

Anti-Anti-Suit-Injunctions

For a long time one could observe that foreign legal systems are increasingly expanding into extraterritorial situations. The Anglo-Saxon judiciary is particularly well known for this. The German courts are now defending themselves against overly intrusive legal systems.

In patent an infringement matter in Germany, the holder of a German part of a European patent had asserted her patent rights against an alleged domestic infringer in front of the Munich I District Court.

The supplier of the alleged infringer subsequently applied for an injunction in the USA prohibiting the patentee from bringing an action against the alleged infringer in Germany. The reason given for this motion was that the patent patentee allegedly infringed his FRAND obligations by filing the patent infringement suit. The US court observed the defendant's/patentee's right to be heard and forwarded the suppliers motion to him.

Such so-called "anti-suit injunctions" (i.e. orders issued by one court to stop proceedings in front of another court) are common practice in the USA and the United Kingdom and in many cases they are able to thwart already pending court proceedings in other countries.

In the proceedings in question, however, the patentee went on to counterattack and applied to the Munich I District Court for an interim injunction against the supplier to prohibit him from requesting such an anti-suit injection and to withdraw this action in the US.

The Munich I District Court complied with the patentee's request by issuing a ruling and repeated this ruling in further proceedings against the supplier‘s parent company.

The District Court stated that the request for such an anti-suit injection would impair the patent holder's right to bring an action of law. According to a decision of the Düsseldorf Higher Regional Court of 1996, the rule of law principle (Rechtsstaatsprinzip) and the right to obtain effective justice (Rechtsgewährungsanspruch) prohibit such an anti-suit injunction. Such action would also affect the sovereign rights of the Federal Republic of Germany. The jurisdiction of the Federal Republic of Germany was impaired if a foreign court gave instructions to the parties to proceedings in Germany as to how they should behave or engage in such conduct and which claims they were entitled to submit.

It is also an interference in the sovereign rights of Germany that certain proceedings may not be brought before German courts or must be withdrawn. On the contrary, the national courts must decide independently whether they are competent to hear and decide the individual case.

The irony of that preliminary injunction by the München I District Court is that a court prohibits one party from requesting a foreign court to continue proceedings which are intended to prevent the first court from continuing and deciding its own case ("anti-anti-suit-injunction"). The reason lies in the fact that a foreign court is not allowed to interfere in the proceedings of the ordering court. The presumed contradiction is that the ordering court does exactly what it forbids the other court to do. This shows that such violent anti-suit injunctions are a venom that can apparently only be countered with an identical antidote.

The judicial restraint in extraterritorial decisions and the consideration of the sovereignty rights of other states, which is normally common practice in continental Europe, is justified. Where, however, one‘s own constitutional principles are affected by foreign courts, the legal system

must find a way (except through diplomatic channels) to defend itself and enforce its own constitution.

The German courts will presumably be approached more often in this way in the future in order to enforce the constitutional claim to the granting of justice against intrusive legal systems.

Prof. Dr. Christian Donle
Lawyer, Partner
Berlin
Tel +49 (0)30226922-0
berlin@preubohlig.de
Profil: Link Website

FOCUS Spezial 2019

Preu Bohlig & Partner is one of the top commercial law firms in Germany.
This is the result of a survey carried out by the data company Statista for the news magazine FOCUS. We were named in patent law and trademark law.

Misleading by the assertion of an unjustified claim

In its ruling of 06.06.2019 in the case „Identity theft" (Ref.: I ZR 216/17), the Federal Supreme Court decided that the request to pay for services not ordered is to be regarded as a misleading business act within the meaning of § 5 para. 1 sentence 2 case 1 UWG if the consumer addressed withdraws the claim from the request that he ordered the service (which was not the case).

Pursuant to Section 5 (1) sentence 1 UWG, anyone who commits a misleading commercial act which is likely to induce the consumer or other market participant to make a transactional decision which he would not otherwise have made is acting unfairly. Pursuant to Section 5 (1) sentence 2 UWG, a commercial act is misleading if it contains untrue information or other information suitable for deception about certain circumstances which are listed in detail in this statutory provision.

The plaintiff in the proceedings was Verbraucherzentrale Baden-Württemberg e.V. The defendant had first sent a reminder itself, then through a debt collection agency and finally through a lawyer a total of 4 requests for payment of an amount of 17.94 Euro for an allegedly ordered service. As it turned out, the consumer had not ordered this service. The defendant referred to the fact that probably a so-called identity theft would be present. Apparently an unknown third party had used the data of the consumer contacted to order the service in question. However, she was not responsible for this. Like the previous instances (LG and OLG Koblenz), the Federal Supreme Court decided that it would not matter whether such an „identity theft" had occurred or not. The claim for injunctive relief asserted by the plaintiff was independent of fault. With the requests for payment, the defendant had asserted that the consumer had ordered the service. That assertion was untrue. Furthermore, that untrue allegation was also such as to induce the consumer to make a transactional decision (namely the payment requested) which he would not otherwise have made. For this reason alone, the claim for injunctive relief asserted pursuant to § 8 (1) UWG was well-founded.

Jürgen Schneider
Lawyer, Partner
Munich
Tel +49 (0)89383870-0
jsc@preubohlig.de
Profil: Link Website

„Antitrust Law Neutral Closing Statement"

With a legally binding judgment dated 11.07.2019, file number: 29 U 2134/19, the Munich Higher Regional Court commented on a final declaration that had been issued in a previous preliminary injunction procedure in a patent matter. The decision is published, for example, in Mitteilungen der deutschen Patentanwälte 2019, page 449 ff; PharmR 2019, 553.

In 2016, the Munich I Regional Court issued an interim injunction on the basis of a patent. As always, the defendant in this case, which is recognizably IFA GmbH, issued a final declaration on the temporary injunction without further ado and waived in particular the rights under Section 927 ZPO, i.e. also the right to apply for the revocation of the temporary injunction due to changed circumstances. From the accompanying letters of the lawyers involved it resulted that this waiver should apply „until the expiration of the property right".

In fact, an objection to the interim injunction would have been appropriate at the time, since the listing in the Lauer-Taxe does not constitute an act of use relevant under patent law (see OLG Düsseldorf, MIT 2006, 428). IFA GmbH does not itself perform any of the acts covered by Sections 9 No. 1-3 PatG. IFA GmbH merely offers a platform on which generic companies offer their products. The mere setting of an adequate cause for actions of third parties within the meaning of § 9 PatG does not trigger an own perpetration. The prerequisite for liability as a disrupter would again be a violation of one's own examination obligations, the extent of which is determined by whether and to what extent an examination can be reasonably expected under the circumstances of the individual case. IFA GmbH does not, however, have the task of ensuring that medicinal products are placed on the market without the infringement of third-party industrial property rights. Rather, the generics companies are responsible for examining the legal admissibility of their new offering. IFA GmbH is neither equipped nor competent to review registration applications for any infringements of industrial property rights (see BGH, 27.10.2011, I ZR 131/10 - DENIC and LG Frankfurt am Main, Urteil vom 13.09.2019, Az. 3-10 O 78/19).

Some time after the submission of the final declaration, the Federal Patent Court declared the patent at first instance null and void. The patentee appealed against the decision of the Federal Patent Court to the Federal Supreme Court, so that there was no final decision on the legal validity of the patent.

After the first-instance decision of the Federal Patent Court, which was not final and absolute, the respondent in the preliminary injunction proceedings filed an action for revocation of the preliminary injunction. After prior suspension of the enforcement of the action, the Munich I Regional Court granted the application, in particular on the grounds that the final declaration pursuant to Sections 1 and 19 of the ARC was contrary to antitrust law and thus invalid. The respondent was therefore not prevented from requesting the revocation of the interim injunction due to changed circumstances.

The Munich Higher Regional Court overturned the first-instance decision and dismissed the complaint. With the final declaration, the plaintiff for annulment had just waived her right to apply for annulment of the temporary injunction due to changed circumstances. The final declaration had to be interpreted - in particular also because of the accompanying letters of the lawyers involved - to the effect that this waiver applied as long as the patent in dispute had not been declared null and void finally. A different interpretation would place the creditor of an interim injunction in a worse position than that of an identical legally binding title in the main action despite the final declaration. Since the patent at the disposal had not yet been finally destroyed, the plaintiff was prevented from filing an application for revocation because of the final declaration.

The final declaration was not contrary to antitrust law at the time of submission in 2016 and was therefore not invalid. Agreements on property rights are contrary to cartel law - unless they are exempted by law - if they either have the object of restricting competition or if they result in a noticeable restriction of competition. The Munich Higher Regional Court referred to a decision of the Düsseldorf Higher Regional Court (Cartel Senate), published e.g. in NZKart 2015, page 109 et seq. This decision of the Düsseldorf Higher Regional Court had resulted in a delimitation agreement in trademark law. The Düsseldorf Higher Regional Court decided that a (demarcation) agreement in trademark law was antitrust neutral insofar as it merely concretized the existing industrial property rights, because the regulations on market conduct would then not be based on the privately autonomous agreement but on the protective content of the regulated industrial property rights. It was sufficient here that the contracting parties had a serious, objectively justified reason to assume at the time the agreement was concluded that the beneficiary contracting party was entitled to an injunction against the market conduct prohibited by the agreement, so that it was to be seriously expected that the party concerned would have been prohibited from this market conduct by a court. The question as to whether this is the case depends on the legal situation on the day the agreement was concluded (see in particular BGH GRUR 2011, page 641 f. -Jette Joop).

In the present constellation, however, the question arises as to whether, when the final declaration was submitted, IFA GmbH had a serious and objectively justified reason to assume that the injunction claim on the basis of the injunction patent pursuant to the preliminary injunction of the Munich I Regional Court was actually given in the absence of its own infringing act.

In constellations other than IFA GmbH, it is in principle rather rare for a final declaration to be contrary to antitrust law. If a court issues a temporary injunction and thus affirms the existence of an injunction claim, the parties may also have the „serious and objectively justified reason“ to assume that an injunction claim based on the property right exists. Something else may apply, however, if, for example, the right to cease and desist was opposed by a plea, in particular the plea of non-use, when the final declaration was made in a trademark matter. Then the injunction claim was not enforceable and even in such cases at least one delimitation agreement in trademark law is contrary to antitrust law and thus invalid.

Jürgen Schneider
Lawyer, Partner
Munich
Tel +49 (0)89383870-0
jsc@preubohlig.de
Profil: Link Website

Peter von Czettritz
Lawyer, Partner
Munich
Tel +49(0)89383870-0
pcz@preubohlig.de
Profil: Link Website

Protectability of acronyms as trademarks?

By decision of 18.7.In 2019, the Federal Patent Court, AZ: 25 W (pat) 532/18, dismissed an appeal against a decision of the Trademark Office of the German Patent and Trade Mark Office according to which the designation „RZT Resilienz-Zirkel-Training" could not be registered as a trademark for the goods due to lack of distinctive character: „Software, magnetic recording media, vinyl records, CDs, DVDs, digital recording media, computer software, printed matter, teaching and teaching materials (except apparatus)" and the services „Education, training, sporting activities, health counselling, health and beauty care, services of health centres, therapeutic care and medical treatment, therapy services".

„Resilience" is a technical term used in particular in the field of psychology which designates mental resilience or the ability to survive difficult life situations without lasting impairment. The term ‚circuit training' designates a special method of fitness training in which different stations have to be completed one after the other, each of which focuses on specific areas (e.g. endurance, mobility or speed). The combination of words „Resilienz-Zirkel-Training" thus has the meaning of a training to strengthen resilience, i.e. resistance and inner strength, which is necessary to master complex situations, challenges and difficult life crises and which is easily understandable for the addressed circles. The preceding sequence of letters ‚RZT' clearly consists of the first letters of the following word combination (acronym) and thus appears only as an accessory part of the overall designation, which shares the descriptive character of the word combination.

The decision is consistent with settled case-law, according to which acronyms lack distinctive character if they are explained by the subsequent word combination and the word combination is to be regarded as descriptive (see in particular BGH GRUR 2012, 616 et seq. - NAI Der Natur-Aktien-Index).

Jürgen Schneider
Lawyer, Partner
Munich
Tel +49 (0)89383870-0
jsc@preubohlig.de
Profil: Link Website

Hexal reaches, together with Preu Bohlig, a landmark decision on the OTC switch before the Federal Administrative Court[1]

I. Introduction

In its decision of 12 September 2019, the Federal Administrative Court, Case No. 3 C 3.18, set aside the decisions of the Administrative Court Cologne of 22 September 2015, Case No. 7 K 6109/14, the Higher Administrative Court NRW of 17 February 2017, Case No. 13 A 2505/15, and ruled accordingly:

„It is determined that the maintenance of the prescription requirement for desloratadine also for oral use in the indications of allergic rhinitis and urticaria in adults, adolescents and children from two years of age in Annex 1 of the Drug Prescription Regulation violates the rights of the plaintiff.

The fundamental dispute over the conditions and timing of the release of an active substance from the prescription obligation on a national level began in 2013 and lasted until autumn 2019, because both courts of lower instance had not allowed both the appeal to the Higher Administrative Court and the appeal to the Federal Administrative Court, and Hexal with Preu Bohlig each time had to fight for the higher instance by means of a non-admission appeal.

All the more satisfactory is the strengthening of the constitutionally guaranteed rights of the pharmaceutical manufacturer by this decision.

This positive legal decision in third instance in favor of Hexal will have far-reaching consequences for the OTC Switch, the procedure with which prescription drugs are released for free sale.

II. Facts of the case

Hexal is the marketing authorisation holder of two nationally approved drugs containing the active ingredient desloratadine.

All centrally and nationally approved drugs with the active ingredient desloratadine in Germany are to date prescription-only.

With regard to medicinal products that are approved in the central procedure according to Regulation (EC) No. 726/2004, the prescription status is also decided in the European approval procedure. Similarly, the release of a centrally authorised medicinal product from the prescription requirement is carried out at the European level in application of the „Guideline on Changing the Classification for the Supply of a Medicinal Product for Human Use“.

[1]https://www.juve.de/nachrichten/verfahren/2019/09/niederlage-fuer-ministerium-hexal-gewinnt-mit-preu-bohlig-grundsatzstreit-zur-verschreibungspflicht

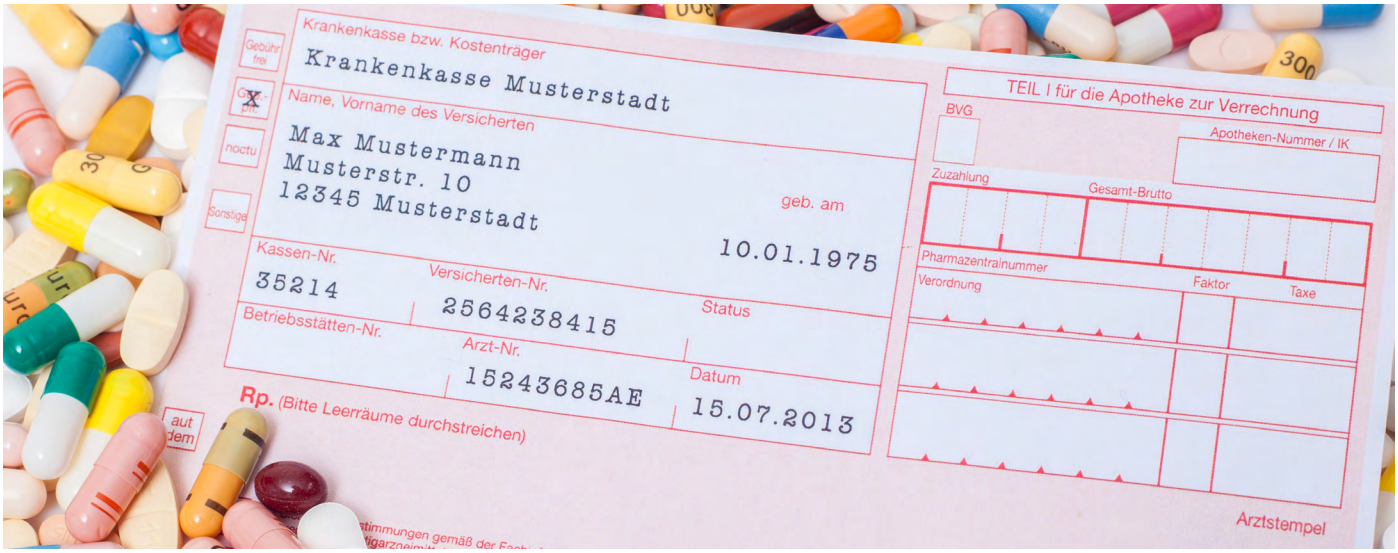
The prescription obligation for medicinal products nationally authorised in Germany is regulated in § 48 AMG and the prescription procedure provided for therein. Active substances subject to prescription are all listed in Annex 1 of the Drug Prescription Regulation (AMVV), which is issued and amended by the Federal Ministry of Health in agreement with the Federal Ministry of Economics and Technology by statutary order with the consent of the Bundesrat. By statutory order, substances are included in Appendix 1 or deleted again and thus active substances are subject to prescription or released from prescription.

Desloratadine is still listed in Appendix 1 of the AMVV and therefore nationally approved drugs with the active substance desloratadine are subject to prescription.

The first approval of desloratadine was granted on January 15, 2001, therefore desloratadine is a substance whose effects and side effects are known and have been evident from scientific evidence for more than 10 years.

Furthermore, according to the vote of the Committee of Experts for Prescription Obligations of 25 June 2013, it is neither a substance that can endanger health when used as intended, if it is used without medical supervision, nor is there a frequent misuse, which is why at the 70th meeting of the Committee of Experts for Prescription Obligations on 25 June 2013, it was decided to release the active substance desloratadine for oral use with the indications „allergic rhinitis“ and „urticaria“ in a single dose of 5 mg, 1.25 mg, 2.5 mg and in a maximum daily dose of 5 mg.

However, the BMG refused to implement the vote of the Expert Committee with the argument that the implementation of the vote of the Expert Committee on Prescription Obligations would mean that the release from the prescription obligation would only be effective for the nationally approved drugs. Since the centrally approved drugs can only be released from the prescription requirement by the EU Commission, this could not be communicated to the public. In order to prevent a split



market, the implementation of the vote would be waived until the prescription obligation for drugs containing desloratadine approved by the EU Commission is lifted.

Differences in prescription requirements in the individual Member States and for nationally and EU-wide authorised medicinal products on a single market are, however, already inherent in the system of Directive 2001/83/EC, as Article 74a of the Directive shows. According to this provision, it is in fact not unusual, but desired by the legislator of the directive, that during a period of one year after approval of the first change in the classification of a preparation as subject to prescription/non-prescription, other preparations continue to be placed on the market with the other classification for one year. In addition, the public is familiar with differences in

prescription status for preparations with the same active substance and indication knows throughout that prescription and non-prescription medicinal products with identical active substance and only minor differences in indication or even only in package size are permanently marketed in parallel.With the current decision of the Federal Administrative Court that Hexal is violated in its rights by the maintenance of the prescription obligation for desloratadinealso for oral use in the indications of allergic rhinitis and urticaria in adults, adolescents and children over two years of age in Annex 1 of the Drug Prescription Regulation, the listing of desloratadine in Annex 1 of the AMVV can no longer be justified, so that the Drug Prescription Regulation must be amended with regard to the listing of desloratadine in Annex 1.

III. Reasons for the decision

Initially, the Federal Administrative Court clarified positively and clearly that the plaintiff‘s petition can in the present case be pursued with a declaratory action directed against the legislator of the prescribing regulation and that the filed declaratory action is therefore admissible. While the Administrative Court of Cologne had still assumed that the complaint was admissible but unfounded, the OVG NRW had already denied its admissibility with some astonishing constructions. The Federal Administrative Court rejected this pleasingly clearly..

Contrary to the opinion of the Court of Appeal, the Medicines Act would not provide for any procedure in relation to a person conforming to a regulation for the desired amendment of an existing prescription obligation to which the plaintiff could be primarily referred to in order to enforce her rights.

In particular, the plaintiff could in any event not be expected to have to clarify questions of administrative doubt in criminal or fine proceedings from the prosecution bank, which the OVG NRW had regarded as a possibility.

Even administrative proceedings at the enforcement level could not bring the plaintiff any closer to her request, since the supervisory authorities do not have the authority under Section 69 of the German Medicines Act (AMG) to permit the conduct in question.

The same also applies to the enforcement dispute referred to by the Court of Appeal regarding an obligation under Section 28 of the German Medicines Act to secure the labelling requirement. Such an obligation would only serve to implement a decision taken at the approval level.

Although a legal relationship with the licensing authority could be established, this would also not cover the present case. The plaintiff could therefore not achieve her legal protection request even in such proceedings. In this respect, the Federal Administrative Court has clear-

ly presented in detail that the intended change to the prescription obligation does not fall within the scope of § 29 AMG.

Moreover, also the defendant had obviously taken the view that the Medicines Act does not provide for any administrative procedure in relation to the regulatory authority or the supervisory authorities for the requested change to the prescription requirement of an authorised medicinal product. After all, it has taken over the plaintiff‘s application to the Bundesinstitut für Arzneimittel und Medizinprodukte (Federal Institute for Drugs and Medical Devices).

The Federal Administrative Court clearly states with regard to the admissibility of the action that effective legal protection for the requested amendment of an existing prescription obligation can only be granted in the legal relationship to the legislature. The plaintiff must not be primarily referred to indirect procedural paths which are not laid down in the Medicines Act and which can never lead to success in the administrative proceedings themselves.

The Federal Administrative Court also takes a pleasingly clear position on the merits of the declaratory action. In particular, the Federal Administrative Court could also decide on the merits because the legal dispute was ready for decision.

The scope granted to the legislator in the decision on the maintenance of an existing prescription obligation was limited and related to the criteria specified by the legislator. Neither the aspects put forward by the defendant nor any other obvious considerations justify the unrestricted retention of the prescription requirement for drugs containing the active substance desloratadine.

Section 48 (2) sentence 1 No. 3 AMG reflects the prerequisites for the order to repeal it as actus contrarius, so that it is decisive whether a medicinal product can endanger human health if it is used without medical supervision. The Federal Administrative Court has expressly stated that, contrary to the view of the defendants, the legislator has not granted it any „free discretion“ beyond this to consider further concerns. The legislator is not entitled to an original legislative right. His authority is based solely on the law that empowers him.

The arguments put forward by the defendant as to why desloratadine should continue to be subject to prescription would all correspond to the systematics of pharmaceutical law. They are the result of the lack of full harmonisation in the field of pharmaceutical law and do not give rise to health risks. The same applies to indirect consequences which could result from the connection to the prescription obligation in the reimbursement system of the statutory health insurance.

The Federal Administrative Court correctly states that it is not clear why health hazards within the meaning of § 48 (2) sentence 1 no. 2 of the German Medicines Act (AMG) should in themselves result from the dual nature of the pharmaceutical system in the European Union.

IV. What‘s the next step?

In the present case, the decision of 12.09.2019 established that the maintenance of the prescription requirement for desloratadine for oral use in the indications allergic rhinitis and urticaria in adults, adolescents and children aged two years and over in Annex 1 to the Drug Prescription Regulation violates the rights of Hexal. This finding also includes the obligation of the BMG to delete desloratadine from Annex 1 of the Drug Prescription Regulation, otherwise Hexal would continue to be infringed. This would be a violation of the mandatory requirement under constitutional law enshrined in Article 19 (4) of the Constitution for the effective implementation of legally binding administrative court rulings.

It is to be expected that the BMG will comply with the administrative court‘s decision fully and without objection and accordingly amend Annex 1 and will not simply ignore it as has happened recently - for example in Bavaria. The legislator of the VwGO, which came into force on 1.4.1960, assumed that it did not take more to comply with a judgement by the authority than a threatening hint. The assumption was that all bearers of official authority, i.e. also authorities, would respect judicial decisions and voluntarily comply with their obliga-

tions. Nevertheless, the legislator has wisely foreseen enforcement against authorities by referring to the rules of the ZPO in § 167 VwGO in order to guarantee complete legal protection.

Recently, the Munich Constitutional Court, decision of 9 November 2018, file number 22 C 18.1718, was forced to present a question to the European Court of Justice on compulsory detention for non-compliance with a legally binding judgment to the European Court of Justice. In this case, the correctness of the legally binding ruling of the Administrative Court of Munich of 9 October 2012 has been established since a ruling of the Federal Administrative Court of 27 February 2018, file number 7 C 26.16. The decision of the Administrative Court of Munich of 27 February 2018, file number 7 C 26.16, has been passed. Nevertheless, the Minister President of Bavaria declared in the State Parliament that the judgment would not be complied with. In its EuGH submission, the VGH Munich therefore stated that the State of Bavaria had determined both vis-à-vis the courts and publicly, and this by its highest ranking political office bearer, not to fulfil the judicially imposed obligations and that in the meantime several penalty payment threats and determinations had remained fruitless. The VGH Munich was pleasingly clear in its decision that this deliberate disregard of legally binding court decisions by the executive authority was unacceptable.

Tanja Strelow
Graduate biologist,
Lawyer
Tel +49 (0)89383870-0
tst@preubohlig.de
Profil: Link Website

Peter von Czettritz
Lawyer, Partner
Munich
Tel +49(0)89383870-0
pcz@preubohlig.de
Profil: Link Website

Orphan status for a medicinal product with the same active substance and in the same indication as an already approved medicinal product with orphan status

In its judgment of 29 July 2019 in Case C-359/18 P Shire Pharmaceuticals Ireland v European Medicines Agency, the Court of Justice of the European Union (CJEU) confirmed the first-instance judgment of the European Court according to which it is possible for a company to obtain orphan designation for a medicinal product containing the same active substance as an authorised orphan medicinal product even if that orphan status is sought for the same indication.

Subject matter of the dispute was the decision of the European Medicines Agency („EMA“) not to validate an application by Shire Pharmaceuticals Ireland („Shire“) for designation of a medicinal product as orphan medicinal product containing the same active substance (idursulfase) as an already authorised orphan product by Shire and whose orphan status was applied for in the same indication.

Shire claimed that the product in question was a different medicinal product compared to the one already authorised since it would differ in composition, route of administration and therapeutic effect. If this medicinal product were then also authorised as an orphan product, on the basis of this position the new medicinal product would be protected by an independent market exclusivity right under Article 8(1) of Regulation 141/2000 („Orphan Regulation“), which prohibits the responsible authorities from accepting marketing authorisation (“MA”) applications or granting MAs for similar medicinal products in the same indication for a period of 10 years from the date on which the MA was granted (so-called „Orphan Market Exclusivity Right“).

The EMA has always been of the opinion that a company can only obtain an independent orphan status for the same active substance for different diseases, but that this would not be possible for the same disease. The consequence of this position is that the 10-year Orphan Market Exclusivity Right for both products begins with the first approval of the active substance so that the subsequent approval of the second drug would not enjoy its own 10-year Orphan Market Exclusivity right due to the lack of an independent orphan status.

In this case, the European Court of Justice has agreed

with the European Court of First Instance that new medicinal products, even if they contain the same active substance as existing orphan medicinal products and the orphan status is applied for the same therapeutic indication, should be able to be independently designated as orphan medicinal products and thus be subject to an independent 10-year orphan market exclusivity right if at the time of MA grant they fulfil the criteria for designation as orphan medicinal products pursuant to Article 3(1) of Regulation 141/2000, i.e. if they have a significant benefit compared to the already authorised medicinal product.

Article 5 (1) of the Orphan Regulation requires the EMA to examine whether an application for designation as an orphan medicinal product has already been the subject of an earlier MA application. Article 5(2) of the Orphan Regulation contains a list of documents to be submitted with the application for designation as an orphan medicinal product. If these documents referred to in Article 5 (2) were submitted, the CJEU requires the EMA to validate the application for designation as an orphan medicinal product if this medicinal product is not identical to the medicinal product already designated as an orphan medicinal product. It is subsequently the responsibility of the Committee for Orphan Medicinal Products (COMP) to assess whether the new (second) product actually meets the criteria for designation as an orphan medicinal product set out in Article 3(1) of the Orphan Regulation, in particular with respect to the significant benefit.

With regard to the criteria by which the (non-)identity of the products is assessed, the CJEU did not set any general criteria, but simply stated in recital 40 of its judgment that on the basis of the alleged differences in composition, route of administration and therapeutic effects, the second product is not the same as the first. It can therefore be assumed that this will remain a matter of facts on a case by case basis.

Overall, this ruling of the CJEU is of great importance for the originator industry, since it confirms the possibility of obtaining an independent orphan status with a new orphan market exclusivity right even if the new product represents a further development of an already approved product with the same active substance for the same disease, provided that this has a significant benefit.

Dr. Alexander Meier
Lawyer, Partner
Munich
Tel +49 (0)89383870-0
ame@preubohlig.de
Profil: Link Website

New Incoterms® 2020

The International Chamber of Commerce (ICC) has revised the internationally accepted trade clauses. The new Incoterms® 2020 are to come into force on 01.01.2020. Please note the following in your trade agreements:

1. The Incoterms® are not automatically renewed. If you have agreed the validity of Incoterms® 2010 in your contracts, then Incoterms® 2010 will continue to apply as commercial clauses for your contractual relationships. However, you should ensure that you have designated the Incoterms® accordingly, i.e. not only the abbreviation from the known three letters (e.g. EXW), but also the Incoterms® with the respective year.

2. As known with the previous Incoterms® 2010, the parties can choose from eleven clauses. Although the number of clauses remains the same, individual clauses have been adapted or modified to the needs and wishes of the practical application and experience.

The following Incoterms® have been amended or deleted and should be reconsidered in your contracts if you have used them so far.

The DAT clause has been deleted. This clause should now only be used with the addition Incoterms® 2010 so that its validity remains unaffected.

There have been changes and adaptations to three Incoterms®, each of them has been better tailored to the needs of the parties and practice:

First, the delivery terms CIP and CIF were extended by one function and made more flexible for the parties. CIP „Carriage and Insurance Paid to“ means as much as carriage paid and insured and CIF „Cost Insurance and Freight“ is mainly applied to ship freight. Previously, the clauses always covered insurance with minimum coverage. For a transport according CIP, an all insurance (A) must now be taken out by the seller on behalf of the buyer. The parties can also agree on an insurance with the maximum coverage (A), the minimum coverage (C) or a middle way (B). These recognized abbreviations for transport insurance (A), (B) or (C) are provided by the Cargo Clauses Institute (ICC). Although these insurance conditions and terms originate from the sea freight business, they are also increasingly being incorporated into the overland freight transport or multimodal transport of goods. The exact scope and coverage of the Cargo Clauses Institute is determined and issued by the International Underwriting Association of London (IUA).

The conditions associated with the FCA „Free Carrier“ clause, have also been adjusted. This also mainly concerns international sea freight transport and the possibility for the seller to receive payment by means of a documentary letter of credit once the goods have been handed over to the shipper. Prior to the modification, the parties usually only used FOB „Free on Board“, which transferred the risk and cost burden to the buyer at the port of departure. After an explicit agreement of the parties in addition to FCA, the seller now has the possibility to request the „Bill of Lading“ with the “On-Board” note from the carrier after unloading at a terminal. The buyer may instruct his carrier to surrender the Bill of Lading. This has the advantage for the parties that delivery according to FCA to the final terminal is guaranteed by the seller, but the seller can already initiate payment with the bill of lading from his documentary letter of credit as soon as the goods are handed over to the carrier.

3. The following Incoterms® are new:

The deleted clause DAT previously described „Delivered at Terminal“. However, this clause is now more general and had been renamed in DUP by the International Chamber of Commerce. This means, „Delivered at unloaded place“ and gives the parties more leeway and flexibility, as the clause now regulates that the goods are delivered at the place where they should be unloaded. Hence, the transfer of risk is independent of a ter-

minal. This now opens the clause to a wider application also on multimodal transports.

4. Please note that the Incoterms® contain only limited provisions regarding place of delivery, place of performance, costs and transfer of ownership. The Incoterms® do not replace a well thought-out contract.

5.The clauses FAS, FOB, CFR and CIF are designed only for contracts of sale with delivery by ship and in particular are not suitable for shipment by container. You should choose other clauses more appropriate for container transport.

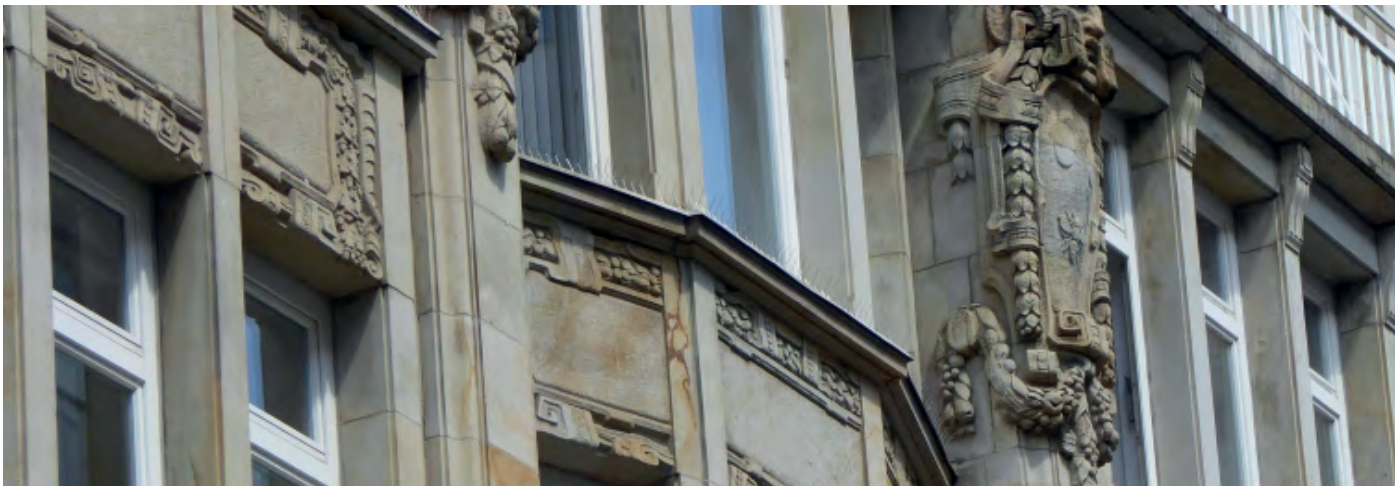
6. Very often, the parties agree on the EXW and DDP clauses. Nevertheless, be aware that these clauses are problematic due to customs implications for international transports.

Albrecht Lutterbeck
Lawyer, Partner
Düsseldorf
Tel +49(0)211598916-0
alu@preubohlig.de
Profil: Link Website

Kira-Christin Winkler
Lawyer
Düsseldorf
Tel +49(0)211598916-0
kcw@preubohlig.de
Profil: Link Website

Preu breakfast in Hamburg

In October, Preu Bohlig's Hamburg team again invited regional patent attorneys to a Preu breakfast.



In front of around 20 guests, lawyer Til Quadflieg from Preu Bohlig's Hamburg office explained the latest developments regarding the protection of technical products under the German Act Against Unfair Competition. Based on a plurality of decisions of the German Federal Court of Justice in recent years, there are extensive possibilities to prevent imitation of technical products even after patent expiration. Therefore, this legal tool should always be considered by patent attorneys, either in order to give the client additional opportunities to protect the product or in order to avoid unpleasant surprises and to anticipate attacks by the opposing party at an early stage.

After the lecture, the guests had the opportunity for a personal discussion and for enjoying the rich breakfast buffet, as always.

Preu Bohlig's Hamburg team thanks for the fruitful discussions and the big interest in our event.

The next Preu breakfast in Hamburg will take place on 14 January 2020 in the hotel „Hafen Hamburg". We are looking forward to meet familiar colleagues as well as new participants.

Til Quadflieg, M.A.
Lawyer
Hamburg
Tel +49 (0)406077233-0
tqf@preubohlig.de
Profil: Link Website

Seminar on current developments in patent and design law in Japan and China

On 28 October 2019, a new edition of a lecture event on the latest developments in IP in Japan and China was held with great success at the Kaufmanns-Casino in Munich. For the third time, Preu Bohlig & Partner organized this seminar together with colleagues from the Japanese-Chinese law firm Sonderhoff & Einsel.

In the morning Mrs. Masako Barnard (Sonderhoff & Einsel) explained the patent requirements of IoT, AI and other software patents in Japan. After the lunch break Mr. Felix-Reinhard Einsel (Sonderhoff & Einsel) presented the patent infringement proceedings from a Japanese perspective. After a short coffee break, Mrs. Tian Wu (Sonderhoff & Einsel Hamburg) informed about the patent infringement proceedings in China and Mrs. Masako Barnard (Sonderhoff & Einsel) about the revision of design law in Japan. After an extensive round of discussions with the seminar participants, there was the opportunity for a social gathering in the premises of the Kaufmanns-Casino.

Current events, seminars and lectures

see website „News“

JAN 2020

14. Januar 2020
Preu breakfast in Hamburg
„Was ist noch vertraulich? Zugang zu geschäftskritischen Informationen bei europäischen Behörden“

FEB 2020

4. Februar 2020
Preu breakfast in Munich
„Was ist noch vertraulich? Zugang zu geschäftskritischen Informationen bei europäischen Behörden“
13. Februar 2020
32. Deutscher Pharma Recht Tag 2020
18. Februar 2020
5. Expertenforum Automotive Recht (EAR)

MARCH 2020

12./13. März 2020
36. Jahreskongress Pharmazeutische Medizin (DGPharMed)

Would you like to receive our newsletter?

PREU BOHLIG & PARTNER
Rechtsanwälte mbB
Telefax +49 (0) 89 383870-22
or info@preubohlig.de

If your colleagues or members of other departments would be interested in receiving our newsletter, please send the completed form to the fax number or email address above.

Firm _____

Name _____

E-Mail _____

Newsletter ☐ German ☐ English

PREU BOHLIG & PARTNER Rechtsanwälte mbB sends this newsletter by email at regular intervals. If you are no longer interested in receiving our newsletters, you can send an email to the sender address of the respective newsletter or to the abovementioned email address at any time. You will then immediately be removed from the mailing list and your data will be deleted. Subscription to this newsletter is free of charge.

Our Locations

Berlin
Grolmanstraße 36
10623 Berlin
Tel +49 (0)30 226922-0
Fax +49 (0)30 226922-22
berlin@preubohlig.de

Düsseldorf
Couvenstraße 4
40211 Düsseldorf
Tel +49 (0)211-598916-0
Fax +49 (0)211-598916-22
duesseldorf@preubohlig.de

Hamburg
Neuer Wall 72
20354 Hamburg
Tel +49 (0)40-6077233-0
Fax +49 (0)40-6077233-22
hamburg@preubohlig.de

Munich
Leopoldstraße 11a
80802 München
Tel +49 (0)89 383870-0
Fax +49 (0)89 383870-22
muenchen@preubohlig.de

Paris
139, boulevard Haussmann
F-75008 Paris
Tel +33-1-53 81 50 40
Fax +33-1-53 81 50 41
paris@preubohlig.de

Imprint:

To read our imprint please follow the link: https://preubohlig.de/impressum/

Editor: Preu Bohlig & Partner Partnergesellschaft mbB (Professional partnership with limited professional liability) based in Munich, entered in the partnership register of the Municipal Court of Munich (Germany) under PR2.

Picture credits: © Fotolia.com, Stefan G. König