



# I. Introduction to Intellectual Property Law

Vorlesung Grundlagen des privaten Wirtschaftsrechts

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Grundbegriffe des Wettbewerbsrechts

Sommersemester 2024



## Terminology

1. „Immaterial-Güterrecht“
2. „Intellectual Property“ – „Geistiges Eigentum“
3. „Gewerblicher Rechtsschutz und Urheberrecht“



## Common Features of all IP Rights

- Intangibility („Intellectual“)
- Ubiquity of use
  - Consequence: Lack of control
- Territoriality of rights
  - a) Universality vs. territoriality
  - b) Territoriality and country-of-protection principle
    - Consequence: Need of protection by any affected state



## Why IP Rights?

1. Granting of privileges
  - a) Professional privileges
  - b) Inventors' privileges („*litterae patentae*“)



## Why IP Rights?

1. Granting of privileges
2. Monopoly theory
3. Theorie of Intellectual Property as theory of natural law; enlightenment
4. Modern approaches
  - a) Consequence of Right to Personality
    - (1) (Trade Mark)
    - (2) Copyright



## Why IP Rights?

1. Granting of privileges
2. Monopoly theory
3. Theorie of Intellectual Property as theory of natural law; enlightenment
4. Modern approaches
  - a) Consequence of Right to Personality
  - b) Economic theories
    - (1) Theory of exchange
    - (2) Theory of incitement
    - (3) Protection of competition: balance of competition for innovation and imitation



# Overview of IP Rights

## Identifiers

- Civil name, sec. 12 Civil Code
- Firm, sec. 14 Commercial Code
- Company symbols, secs. 1 no. 2, 5 para. 1, 2 Trade Mark Act
- Trade marks, secs. 1 no. 1, 3 Trade Mark Act
- Geographical indications, secs. 1 no. 3, 126 Trade Mark Act
- Titles of works, secs. 1 no. 2, 5 para. 1, 3 Trade Mark Act
- Domain names (?)

## Inventors' Rights

- Patent, sec. 1 Patent Act
- Utility model, sec. 1 Utility Model Act
- Semiconductor topographies, sec. 1 Semiconductor Protection Act
- Plant variety, sec. 1 Plant Variety Protection Act
- Design, secs. 2, 1 Design Act
- Copyright, sec. 1 Copyright Act
- Neighboring rights, secs. 70 ff. Copyright Act









## IP Rights and Free Trade

### 1. IP Rights within EU

#### a) IP Rights and Free Movement of Goods

**Ex.:** A produces and sells mineral water in Austria under the trade mark „Petersbrunnen“. He starts to offer his mineral water in Germany as well, but soon receives a cease-and-desist notice from B, who has registered the same term as a trade mark for non-alcoholic pop drinks and uses it in particular for sparkling table water.



## IP Rights and Free Trade

1. IP Rights within EU
  - a) IP Rights and Free Movement of Goods
    - (1) Art. 34, 36 TFEU
    - (2) Limitations
      - i. Distinction of „existence“ and „exercise“ of an IP right
      - ii. Limitation to „specific subject matter“
      - iii. Doctrine of exhaustion



# IP Rights and Free Trade

1. IP Rights within EU
  - a) IP Rights and Free Movement of Goods
  - b) Market Integration and Harmonisation of IP Rights
    - (1) Uniform Community IP rights
      - i. Union (formerly: Community) Trade Mark
      - ii. Community Design
    - (2) Harmonisation of MS' IP rights
      - i. Trade Mark Directive
      - ii. Design Directive



## IP Rights and Free Trade

1. IP Rights within EU
  - a) IP Rights and Free Movement of Goods
  - b) Market Integration and Harmonisation of IP Rights
    - (1) Trade Mark Law
      - i. Union (formerly: Community) Trade Mark 1994/2017
      - ii. Trade Mark Directive 1989/2008/2015



# IP Rights and Free Trade

1. IP Rights within EU
  - a) IP Rights and Free Movement of Goods
  - b) Market Integration and Harmonisation of IP Rights
    - (1) Trade Mark Law
    - (2) Inventors' Rights
      - i. Patent
        - Community Patent failed
        - Then: Solution through „enhanced co-operation“
        - Regulation (EU) No 1257/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection
        - International Agreement on a Unified Patent Court
        - Simultaneous start on 1 June 2023 of unitary patent and unified patent courts



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    - (2) Inventors' Rights
      - i. Patent
        - Community Patent failed
        - Then: Solution through „enhanced co-operation“
        - Since June 1, 2023:
          - Unitary patent protection:
            - Unitary effect of patents throughout EU





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    - (2) Inventors' Rights
      - i. Patent
      - ii. Design
        - Community Design 2002
        - Design Directive 1998



# IP Rights and Free Trade

1. IP Rights within EU
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    - (1) Trade Mark Law
    - (2) Inventors' Rights
      - i. Patent
      - ii. Design
      - iii. Copyright; several harmonizing Directives
        - Term of protection
        - Satellite broadcast and cable operation
        - Licensing
        - Droit de suite
        - Information society („InfoSoc Directive“), 2001
        - Portability Regulation 2017
        - Directive on Copyright in the Digital Single Market (DSM Directive) 2019
        - Directive on television and radio programmes 2019



## IP Rights and Free Trade

1. IP Rights within EU
  - a) IP Rights and Free Movement of Goods
  - b) Market Integration and Harmonisation of IP Rights
    - (1) Trade Mark Law
    - (2) Inventors' Rights
    - (3) Enforcement
      - i. Regulation (EC) No 608/2013: customs authorities
      - ii. Directive 2004/48 on IP rights enforcement



## IP Rights and Free Trade

1. IP Rights within EU
  2. IP Rights in International Trade
    - a) Paris Convention for the Protection of Industrial Property 1883
    - b) Berne Convention for the Protection of Literary and Artistic Works 1886
    - c) Madrid Agreement Concerning the International Registration of Marks 1891
    - d) The Hague Agreement Concerning the International Deposit of Industrial Designs 1925
    - e) Patent Cooperation Treaty 1970, revised
- All administered by WIPO in Geneva
- + European Patent Agreement 1973
  - + TRIPs 1994



## IP Rights and Competition

### 1. IP Rights and market dominance

**Ex.:** A wants to publish a comparative TV guide. To do so A needs information on all critical TV channels broadcast information. The operator of one TV channel B refuses to provide information.



## IP Rights and Competition

1. IP Rights and market dominance
2. Exercise of IP Rights and abuse

**Case 1:** Volvo, the proprietor in the United Kingdom of registered design No 968895 for the front wings of Volvo series 200 cars, instituted proceedings against Veng before the High Court of Justice for infringement of its sole and exclusive rights. Veng imports the same body panels, manufactured without authority from Volvo, and markets them in the United Kingdom. Veng had applied for a license, but Volvo had refused to grant one.





## IP Rights and Trade Policy

1. Uruguay GATT round and TRIPs
2. Traditional knowledge
  - 2000: Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)
  - 2003 UNESCO Convention for the safeguarding of the intangible cultural heritage
  - 2009: Agreement to develop an international legal instrument (or instruments) that would give traditional knowledge, genetic resources and traditional cultural expressions (folklore) effective protection

