Haedicke / Timmann

Patent Law
A Handbook

C. H. Beck · Hart · Nomos

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Haedicke/Timmann (eds.)
Patent Law Handbook
European and German Patent Law

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Patent Law Handbook

European and German Patent Law

edited by

Maximilian Haedicke and
Hendrik Timmann

C. H. Beck · Hart · Nomos
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Foreword

The practical relevance of German patent law and of European patent law as applied in Germany is reflected in its enormous economic impact, Germany being Europe's most important location for patent infringement suits and the country in which most European patent applications are filed. Hence, German patent law is of particular interest not only for German practitioners, but for practitioners throughout the world. Literally everybody who is concerned with patents in Europe has to take the legal situation in Germany into account.

Furthermore, German patent-related legal research and case law have evolved for more than a century, strongly influencing European patent law. It is a further goal of this book to make such long-standing principles accessible to those unfamiliar with the German language in order to enrich the international debate in all legal matters related to patents.

Thus, the Patent Law Handbook is meant for lawyers, legal and patent departments of business entities, as well as judges and administrative bodies worldwide, in order to support them in their day-to-day business when they are concerned with questions relating specifically to German patent law, and in order to allow a comparison of their own legal assessment with German principles.

For these purposes, this book offers a comprehensive presentation and analysis of the substantive issues of German, European and international patent law. It also covers procedural aspects insofar as they do not relate solely to the German court system and therefore seem to be of international interest.

The content of this book is essentially an English translation of its parallel German publication "Handbuch des Patentrechts", which was published in 2012 by C. H. Beck. Some sections of the German equivalent have been adapted to better meet international needs, one section covering purely procedural aspects of infringement suits has been omitted. The section on Supplementary Protection Certificates (SPCs) will be subject to a separate English publication.

The authors of the Patent Law Handbook are judges, attorneys, patent attorneys and researchers. All of them have years of experience in the field of patent law and practice. The editors wish to thank all the authors for their unrelenting efforts and work.

Literature and case law up to February 2012 have been taken into account.

Freiburg and Düsseldorf, August 2013

Maximilian Haedicke *Henrik Timmann*

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Abbreviations and Acronyms

ABl.	*Amtsblatt* (Official journal)
ACTA	Anti-Counterfeiting Agreements
ADA	Arrangements for Deposit Accounts
AIPPI	*Association Internationale pour la protection de la Propriété Industrielle* (International Association for the Protection of Intellectual Property)
AMNOG	*Arzneimittelmarktneuordnungsgesetz* (German phamaceutical restructuring act)
AMPreisV	*Arzneimittelpreisverordnung* (Geman drug price regulation)
AO	*Ausführungsordnung* (implementing regulation); *Abgabenordnung* (German regulation of taxation)
ArbnErfG	*Arbeitnehmererfindungsgesetz*(German employee invention act)
Art./arts.	article/s
AT	*Allgemeiner Teil* (general part)
ATC	anatomical, therapeutic, chemical
BB	*Der Betriebs-Berater* (German law journal)
BeckEuRS	*Beck'sche Rechtsprechungssammlung im Europarecht* (Beck online law report in EU matters)
Beck-RS	*Beck'sche Rechtsprechungssammlung* (Beck online law report)
BER	Block Exemption Regulation
BGB	*Bürgerliches Gesetzbuch* (German civil code)
BGBl.	*Bundesgesetzblatt* (German federal law gazette)
BGH	*Bundesgerichtshof* (German federal supreme court)
BGHZ	*Entscheidungen des Bundesgerichtshofes in Zivilsachen, amtliche Sammlung* (official law report of the BGH in civil matters)
BioMatHintV	*Verordnung über die Hinterlegung von biologischem Material in Patent- und Gebrauchsmusterverfahren* (biological material deposit regulation)
BIRPl	*Bureaux Internationaux Réunis pour la Protection des la Propriété Intellectuelle* (United International Bureaux for the Protection of Intellectual Property)
BKartA	*Bundeskartellamt* (German federal cartel office)
BI. f. PMZ	*Blatt für Patent-, Muster- und Zeichenwesen* (German law journal)
BlPMZ	*Blatt für Patent-, Muster- und Zeichenwesen* (German law journal)
BMBF	*Bundesministerium für Bildung und Forschung* (German federal ministry for education and research)
BMJ	*Bundesjustizministerium der Justiz*(German federal ministry for justice)
BPatG	*Bundespatentgericht* (German federal patent court)
BPatGE	*Entscheidungen des Bundespatentgerichts, amtliche Sammlung (*Official law report of the BPatG)
BR	*Bundesrat* (Second chamber of the German Parliament)
BR-Drucks.	*Bundesratsdrucksache* (Bundesrat printed matter)
BT	*Bundestag* (First chamber of the German Parliament)
BT-Drucks.	*Bundestagsdrucksache* (Bundestag printed matter)
BVerfG	*Bundesverfassungsgericht* (German federal constitutional court)

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BVerwG	Bundesverwaltungsgericht (German federal administrative court)
BVerwGE	*Entscheidungen des Bundesverwaltungsgerichts, amtliche Sammlung* (Official law report of the BVerwG)
Cal. L. Rev.	California Law review
CBD	Convention on Biological Diversity
CCPA	United States Court of Customs
cf.	confer; see
CFREU	Charter of Fundamental Rights of the European Union
ch.	chapter
CIPA	Chartered Institute of Patent Agents (UK)
CIPP	Continuous Improvement Performance Plan
CNPA	Committee of National Patent Agents
COM	Commission documents for the other institutions
CPC	Community Patent Convention
CPI	*Code de la Propriété Intellectielle*
CR/CuR	*Computer und Recht* (German law journal)
DB	*Der Betrieb* (German law journal)
DIN	*Deutsche Industrienorm*
DirMPH	Directive on the Community code relating to medicinal products for human use
DirMPV	Directive on the Community code relating to veterinary medicinal products
DNS	Desoxyribonucleic Acid
DPMA	*Deutsches Patent- und Markenamt* (German patent and trademark office)
DPMAV	*Verordnung über das Deutsche Patent- und Markenamt* (DPMA ordinance concerning the German patent and trademark office)
DPMAVwKostV	*Verordnung über die Verwaltungskosten beim Deutschen Patentamt* (Ordinance concerning administrative costs at the DPMA)
e. g.	for instance
EC	European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice; Court of Justice of the EU
ECMR	European Community Merger Regulation
ECR	European Court Report
Ed./s	edition/s; editor/s
EEA	European Economic Area
EEUPC	European and EU Patent Court Convention
EFTA	European Free Trade Association
EGBGB	*Einführungsgesetz zum BGB* (introductory act to the BGB)
EIPR	European Intellectual Property Review
EPC	European Patent Convention
EPO	European Patent Office; European Patent Organisation
EPUE	European Patent with Unitary Effect
ErstrG	*Erstreckungsgesetz (*German extension law)
ERVDPMAV	*Verordnung über die Neuregelung des elektronischen Rechtsverkehrs beim Deutschen Patent- und Markenamt* (ordinance on the revision of the rules for electronic legal transactions within the German patent and trademark office)
ESPACE	ESPACE-net at the EPO
EST	Expressed Sequence Tag(s)

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et seq./et seqq.	et sequentia
ETSI	European Telecommunications Standards Institute
ETSI IPR	Intellectual Property Rights in ETSI
EU	European Union
EUCO	European Council
EuZW	*Europäische Zeitschrift für Wirtschaftsrecht* (German law journal)
FICPI	*Fédération Internationale des Conseils en Proprieté Industrielle* (International Federation of Intellectual Property Attorneys)
Fn.	footnote
FRAND	Fair, reasonable and non-discriminatory conditions
FS	*Festschrift* (liber amicorum)
GATT	General Agreement on Tariffs and Trade
GC	General Court
GDR	German Democratic Republic
GebrMG	*Gebrauchsmustergesetz* (German utility models act)
GeschmG	*Geschmacksmustergesetz* (German design act)
GG	*Grundgesetz* (German constitution)
GRUR	*Gewerblicher Rechtsschutz und Urheberrecht* (German law journal)
GRUR Int.	*Gewerblicher Rechtsschutz und Urheberrecht – Internationaler Teil* (German law journal – international part)
GRUR-Beil.	*Gewerblicher Rechtsschutz und Urheberrecht – Beilage* (German law journal – supplement)
GRUR-Prax	*Gewerblicher Rechtsschutz und Urheberrecht – Praxis* (German law journal – practice)
GRUR-RR	*Gewerblicher Rechtsschutz und Urheberrecht – Rechtsprechungsteil* (German law journal – law report)
GVG	*Gerichtsverfassungsgesetz* (German judicature act)
GWB	*Gesetz gegen Wettbewebsbeschränkungen* (German law against restraints of competition)
GWR	*Zeitschrift für Gesellschafts- und Wirtschaftsrecht* (German law journal)
G-ZollVG	*Zollverwaltungsgesetz* (German customs administration law)
HGB	*Handelsgesetzbbuch* (German commercial code)
ICT	Information and Communications Technologies
i. e.	id est
ibid	in the same place
id.	*see idem.*
idem.	the same as something/someone previously mentioned
IIC	International Review of Intellectual Property and Competition Law
Impl. Reg. [EPC]	Implementing Regulations to the EPC
InstGE	*Entscheidungen der Instanzgerichte zum Recht des geistigen Eigentums*(German law report of higher regional court concerning IP cases)
IntPatÜG	*Gesetz über internationale Patentübereinkommen* (German law on international patent conventions)
Intro.	Introduction
IP	Intellectual Property
IPR	*International Privatrecht* (private international law)
IPRED	Intellectual Property Enforcement Directive

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ISO/IEC	Information technology – Security techniques – Information security management systems – Requirements
ITRB	*IT Rechtsberater* (German law journal)
JIPITEC	Journal of Information Technology and E-Commerce Law
JIPLP	Journal of Intellectual Property Law & Practice
JW	*Juristische Wochenschrift* (German law journal)
JZ	*Juristen Zeitung* (German law journal)
KostRegBerG	*Gesetzes zur Änderung des patentrechtlichen Ein- spruchsverfahrens und des Patentkostengesetzes*(German law amending patent opposition proceedings and the patent costs law)
LG	*Landgericht* (court of first instance in Germany and Austria)
lit.	litera
LK-*author*	*Leipziger Kommentar zum Strafrecht* (article-by-article commentary on criminal law)
LMuR	*Lebensmittel & Recht* (German law journal)
MA	Marketing authorisation
MarkenG	*Markengesetz* (German trademark act)
Mitt	*Mitteilungen der deutschen Patentanwälte*(German law journal)
MMR	*Multimedia und Recht* (German law journal)
mn.	margin number
MPI	Max Planck Institute for Intellectual Property and Competition Law
MPR	*Medizin Produkte Recht* (German law journal)
MuW	*Markenschutz und Wettbewerb* (German law journal)
MüKo-BGB	*Münchner Kommentar zum BGB* (article.by-article commentary on the BGB)
NJOZ	*Neue Juristische Online-Zeitschrift* (German law online journal)
NJW	*Neue Juristische Wochenschrift* (German law journal)
NJWE-WettbR	*NJW Entscheidungsdienst Wettbewerbsrecht* (German law report)
NJW-RR	*NJW Rechtsprechungs-Report Zivilrecht* (German law report in civil matters)
No./nos.	number/s
NVwZ	*Neue Zeitschrift für Verwaltungsrecht* (German law journal)
NZI	*Neue Zeitschrift für Insolvenzrecht* (German law journal)
OGH	*Oberster Gerichtshof* (supreme court of Austria)
OHIM	Office of Harmonization for the Internal Market
OJ	Official Journal
OJ EPO	Official Journal of the EPO
OLG	*Oberlandesgericht* (higher regional court in Germany)
OMPI	*Organisation Mondiale de la Propriété Intellectuelle*
OWiG	*Ordnungswidrigkeitsgesetz* (German code of administrative offences)
p./pp.	page/s
PACE	Notice from the European Patent Office concerning the programme for accelerated prosecution of European patent applications
para./s.	paragraph/s

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PatG	*Patentgesetz* (German patent act)
PatGÄndG	*Patentrechtsänderungsgesetz* (
PatKostG	*Gesetz über die Koten des DPMA* (patent costs law)
PatKostZV	*Verordnung über die Zahlung der Kosten des DPMA* (patent costs payment ordinance)
PatRModG	*Patentrechtsmodernisierungsgesetz* (law for streamlining and modernising patent law)
PatV	*Patentverordnung* (German patent ordinance)
PC	Paris Convention
PCT	Patent Cooperation Treaty
Pharm. Ind.	German journal
PharmR	*Pharma Recht* (German law journal)
PIP	Practical investigation plan
PMZ	*Patent-, Muster- und Zeichenwesen* (law related to patents, trademarks and signs)
Prop. Ind.	*La Propriété Industrielle* (French law journal)
PrPG	*Produktpirateriegesetz* (German product piracy act)
PTO	Patent and trademark office
R	Rule
R&D BER	Block Exemption Regulation Research and Development
RegCAP	Regulation on Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency
RegMPP	Regulation on medicinal products for paediatric use
RegSPC	Regulation concerning the supplementary protection certificate for medicinal products
RFees	Rules relating to fees
RG	Imperial Court
RGSt	*Entscheidungen des Reichsgerichts in Strafsachen, amtliche Sammlung* (official law report of the RG in criminal matters)
RGZ	*Entscheidungen des Reichsgerichts in Zivilsachen, amtliche Sammlung* (official law report of the RG in civil matters)
RiStBV	*Richtlinien für das Strafverfahren und das Bußgeldverfahren* (German guideline for criminal proceedings and proceedings concerning administrative fines)
RiW	*Recht der internationalen Wirtschaft* (German law journal)
RNA	Ribonucleic acid
ROHGE	*Entscheidungen des Reichsoberhandelsgerichts* (Official law report of the German Imperial supreme commercial court)
RPA	*Reichspatentamt* (German Imperial patent office)
RPBA	Rules of Procedure of the Board of Appeals
RPEBA	Rules of Procedure of the Enlarged Board of Appeals
RulesGCP	German Rules on the Application of Good Clinical Practice during Conduct of Clinical Trials with Medicinal Products for Human Use
SCRIPTed	Centre for Research in Intellectual Property and Technology Law
Sec	Section; paragraph
sid	Scientific information data base
SortG	*Sortengesetz* (German plant variety protection act)
SPC	Supplementary Protection Certificate
StGB	*Strafgesetzbuch* (German penal code)
StPO	*Strafprozeßordnung* (German criminal procedure code)
SUG	*Signaturgesetz* (German digital signature act)

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TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TT	Technology Transfer
TT-BER	Technology Transfer Block Exemption Regulation
UPC	Unified Patent Court
UrhG	*Gesetz über Urheberrecht und verwandte Schutzrechte* (German copyright act)
U.S.C.	United States Code
USPTO	US Patent and Trademark Office
UWG	*Gesetz gegen den unlauteren Wettbewerb* (German law against unfair competition)
v./vs.	versus
Vertical-BER	Vertical Block Exemption Regulation
vol.	volume
VPP	Association of Intellectual Property Experts
VPP-Rundbrief	Circular of the VPP
VwZG	*Verwaltungszustellungsgesetz* (German law on service in administrative procedures)
WIPO	World Intellectual Property Organization
WRP	*Wettbewerb in Recht und Praxis* (German law journal)
WTO	World Trade Organisation
WuW	*Wirtschaft und Wettbewerb* (German law journal)
ZEuP	*Zeitschrift für Europäisches Privatrecht* (German law journal)
ZGE	*Zeitschrift für Geistiges Eigentum* (German law journal)
ZGR	*Zentrale Gewerblicher Rechtsschutz*
ZPO	*Zivilprozessordnung (*German civil procedure code)
ZUM	*Zeitschrift für Urheber- und Medienrecht* (German law journal)
ZWeR	*Zeitschrift für Wettbewerbsrecht* (German law journal)

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