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# Model Law on Intellectual Property

## Reasons for, Content and Prospective of a Current Research Initiative

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## Introduction: The Model Law on IP as a Research Project

### 3 Questions:

- What was the activator / inspiration for the project
- What is the substance of the Model Code?
- What are the advantages?

## German IP-law: the status quo

### Present Structure

- Patent Act
- Utility Model Act (heavily relies on Patent Act)
- Semiconductor Act (in part refers to Patent Act)
- Plant Variety Act
- Trademark Act (refert to Patent Act with regard to GPTO)
- Design Act
- Copyright Act

## German IP-law: the status quo

### Present Structure

- Patent Act: harmonisation only with regard to requirements
- Trademark Act: fully harmonised structure and substance
- Design Act: fully harmonised structure and substance
- Copyright Act: traditional approach

## German IP-law: Current deficiencies

### Structure

- entirely different structure
- lack of transparency
- no easy access for passive users / rightholders
- judiciary has to solve problems for every single act separately

### Substance

- copyright law has not been adapted to information society
- no consistent rules on contractual exploitation
- no rules on multiple protection

## German IP-law: New Challenges

### European Harmonisation

- National IP-law has to provide infrastructure for EU-IPRs
- rules filling the gap must match the structure of Community IPRs
- German patent law will be widely applicable to unitary patents

### Expansion of IP

- substantial areas of overlap call for convergence
- risk of cherry-picking with regard to limitations
- uniform rules on contracts necessary (multi-media-projects)

## German IP-law: Reasons for Reform?

### European Harmonisation

- Common structure will ease implementation of EU-law
- Common rules reduce work, enhance clarity

### National IP-law

- create a fruitful environment for innovation
- clean up in order to make room for consistent development

### Task of the Project:

Restructuring the existing law in line with EU-requirements

## Structure and Content of the Model Law

- Book 1: general part
- Book 2: procedural issues
- Book 3: copyright
- Book 4: trademark law
- Book 5: patent law
- Book 6: utility model law
- Book 7: design law
- Book 8: semiconductor law
- Book 9: plant varieties
- Book 10: employee's creations



## Structure and Content of the Model Law

### **Book 1: general part:**

- rules applicable to all IPRs

### **Book 2: procedural issues**

- streamlining procedure before the German PTO and courts

### **Book 3 – 9:**

- requirements of protection, application proceedings

### **Book 10:**

- employee's achievements

## Structure and Content of the Model Law

### **Book 1: General Part:**

General = addressed to every citizen

- protected achievements, person awarded the right
- general limitations (cartel law, exhaustion, acquiescence etc.)
- multiple protection
- applicable law and jurisdiction
- infringement
- contracts (transfer, licence, credit securities)

## Structure and Content of the Model Law

### **Book 1: General Part**

General = addressed to every citizen

- puts the principles developed by judiciary into statutory law (legal certainty)
- makes it accessible for foreign users (transparency)
- reduces mass of paragraphs to half (efficiency)
- fills gaps of the present statutes (infrastructure for Community-IPRs)

## Structure and Content of the Model Law

### **Book 2: General Procedure**

- rules on all institutions involved (GTPO, patent court, federal courts)
- rules on all persons involved (applicant, competitor, patent attorney)
- competence of office and courts
- general rules on application, priority, form, service of documents
- costs and legal aid

## Structure and Content of the Model Law

### **Book 2: General Procedure**

- streamlines procedure
- structure follows the course of proceedings
- avoids disparities no one can explain
- reduces likelihood of erroneous application

## Structure and Content of the Model Law

### **Book 3 – 9:**

– requirements of protection, application proceedings

#### **Where do you find the relevant rules:**

– Passive User: Book 1

– Active User: Book 1 + 2 + x

## Advantages of Restructuring

**Aim: Keep it short and simple (in comparison to present law...)**

- plain language
- logic structure
- short paragraphs
- narrative headings
- very few cross-references

### **Readability**

we would expect the lay person to understand what it is all about,  
the non-specialised lawyer to solve contracts, liability and infringement

## Advantages of Restructuring

### **Advantages between the lines**

- fostering acceptance by understandable structure
- avoiding contradictions
- preparing for further European harmonization
- providing reliable infrastructure



## Advantages of Restructuring

### Transparency

– fostering acceptance by understandable structure

- **IP is the „new“ Civil Code addressing every citizen**  
all questions relevant for „passive user“ in General Part  
overview on balance of protected achievements/freedom of competition

## Advantages of Restructuring

### Avoiding contradictions

- fostering acceptance by coherent rules
- addressing multiple protection
- focus on economic impact, not on category

### **Avoid Cherry Picking by the Users**

a competitor forced to grant access by a compulsory licence to his software patent may no circumvent this limitaiton by relying on a parallel copyright

## Advantages of Restructuring

### Preparing for further European Harmonization

- uniform approach matches Community IPRs
- makes application of the system for foreign users more easy

**Uniform approach provides a good infrastructure**

## Advantages of Restructuring

### Providing reliable infrastructure

- assure smooth interaction between IP-law and private law
- clarify standard of legal review
- render lengthy contracts unnecessary
- enhance legal security

## Perspectives

- proves that it is possible to set-up a comprehensive IP-code
- overcomes the outdated split between industrial property and copyright
- sets a standard against which new legislation can be measured
- raises awareness for inconsistencies
- proposes solutions for interpretation of current law

## Perspectives

- model for law reform on a large scale or: IP-Code
- model for reform of individual areas: contracts
- eases implementation of future European directives

## Further Information

on the project:

Ahrens, GRUR 2006, 617-624

on the results:

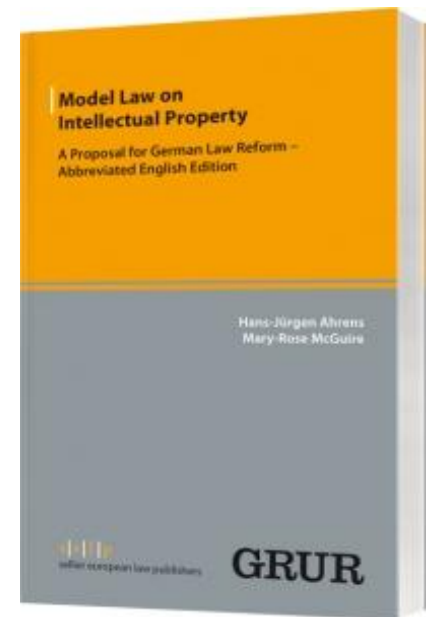
Tilmann, GRUR 2012, 961-967

on the conference:

<http://modellgesetz.uni-mannheim.de/english/>

remaining questions:

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Thank you for your attention!