JSDI-EUA 3310

**Intellectual Property Law**

**Total number of lectures: 12 hours**

**Credits: 6 or 0 credit(s)**

**Examining: alternative exam**

**Lecturer: dr. Kovács, György**

An efficient and balanced Intellectual Property infrastructure is necessary for innovation, competition and creation to flourish in the Single Market. Joint study of the European Patent Office and the Office of Harmonisation on the Internal Market in 2013 show the importance of Intellectual Property in the European economy. More than a third of jobs in Europe (77 million) depend either directly or indirectly on sectors making intensive use of Intellectual Property. In these IP intensive sectors remuneration is 40% above other sectors.

The lectures will cover the most important EU policies, the substantive rules, procedural issues and case studies. Efficient enforcement of Intellectual Property Rights is crucial in order to keep Europe attractive for innovation and investments. The lectures will also touch upon recent policy initiatives and debates in Europe.

**Themes:**

1. The notion of intellectual property. Its categories; different way of recognizing of authors’ rights and related (neighboring) rights on the one hand and industrial property on the other. Differences between the concepts of copyright and authors’ right. Territoriality of exclusive rights relating to intellectual property; its historical and comparative explanation. Theoretical justifications : Natural rights; public interest; incentive and rewarding rationale. The issue of protection against unfair competition.
2. Bridging territoriality by treaties, following the expansion of markets across frontiers. Bilateral and multilateral treaties. Fundamental principles: National treatment, right of priority concerning industrial property; independence of protection. Formal and material reciprocity. Basic international treaties (1883 Paris, 1886 Berne, 1994 WTO/TRIPS, 1996 WIPO). Conventions and Unions. Special treaties. The human rights approach.
3. European Union Law. Competences as regards intellectual property. Respect for national systems of property ownership and the requirement of free movement of goods and services. Respect for existing multilateral treaties of the member states and the free movement imperatives of the EU. Relevant rules of EU competition law.
4. The European Court on the supremacy of EU law over territorial recognition of rights under international treaties and on its application to exclusive licenses concerning industrial property and copyright. Differentiation between existence and exercise of intellectual property rights. National, international and EU exhaustion of distribution rights. No exhaustion of rights in relation to services involving the use of copyright and related rights.
5. Secondary EU legislation on intellectual property. Harmonization; EU legal institutions of industrial property. Treaty making power of the EU concerning intellectual property (in the framework of common commercial policy).
6. Harmonization of copyright and related rights. Directives on the protection of computer programs, rental rights and rights of performers, producers of phonograms, broadcasters, producers of audiovisual works. Terms of protection. Satellite broadcasting. Protection of databases: copyright and a new kind of sui generis right for investors. Artists’ resale right.
7. Harmonization and unification of industrial property. Patents: Paris Union/Patent Cooperation Treaty/European Patent Convention; pending EU patent. New plant varieties: UPOV and related EU regulation. Directive on biotechnological inventions.
8. Trade marks: Paris Union/Madrid Union on trade mark registration. Relevant Community directive and Community trade mark. Related case law. Community design protection: Directive and regulation.
9. Harmonization of the enforcement of intellectual property rights. Civil law and penal sanctions.
10. Exemptions from cartel prohibitions with regard to intellectual property. Abuse of intellectual property rights and case law relating to the abuse of dominant position in the market. The relevance of the “essential facility doctrine”. Block exemptions for certain categories of vertical agreements and for technology transfer.
11. Protection of intellectual productions on the Internet. Basics of digitization. Liability for infringement under the US 1998 DMCA as compared with the European Directive of 2000 on e-commerce. Contributory and vicarious liability of internet service providers: “safe harbors”. Development of case law in the USA: MP3, Napster, peer to peer (P2P) programs, Grokster case. EU “INFOSOC” directive harmonizing copyright and related right issues. Content scrambling systems (CSS) actually hindering access including thereby non protected material. Right of information and fair use doctrine versus copyright. Different opinions in the USA (Universal Studios v. Eric Corley and Reimerdes) and Norway (Jon Johansen).
12. Monopoly on the market: the issue of “collective administration” of copyright and related rights: In general and with regard to the internet. Abuse of dominant position on the computer program market: Microsoft commingled own application programs (e.g. “explorer”) with its Windows operating system. Settlement in the USA: Microsoft must share information on “source code” enabling competitors to develop interoperable programs. Parallel case in the EU. Market reaction: the “open source movement”.

Further reading:

* WIPO Intellectual Property Handbook, Geneva, 2001 ) http://www.wipo.int/about-ip/en/iprm/Ö
* Keeling, D.T.: Intellectual Property Rights in EU Law, vol.I. Oxford EC Law Library, 2003.

EU Intellectual Property Law - Questions

1) Intellectual Property Rights; Industrial Property and Copyright

2) Territoriality of Intellectual Property Rights

3) Incentive function of IPRs

4) Balancing between the law of the Single Market, competition and IPR - relevant

case law of the European Court

5) Balancing between intellectual property and fundamental rights - relevant case law

of the European Court

6) Community trademark - definition and case law

7) Patent protection within the EU - relevant case law

8) Distinction between existence and exercise of IPRs - case law of the European

Court

9) The specific content and essential function of IPRs - case law of the European

Court

10) Case law regarding parallel import

11) Exhaustion of distribution rights on the single market

12) Exhaustion of copyright

13) Main international IPR treaties.

14) Legal basis for harmonisation of IPRs within the EU

15) Copyright directives

16) Software protection

17) The effect of digitalisation and the internet on IPRs

18) IPR enforcement

19) Patent law: Paris Union Treaty - Patent Cooperation Treaty - European Patent –

Unified European Patent

20) Main question of protecting biotechnological inventions

21) Protecting trade secrets and know how

22) Trademarks: Paris Union Treaty – Madrid Union Treaty and Protocol

23) Trademark law harmonisation and Community Trademark

24) Trademark functions

25) Domain names and trademarks

26) License agreements and competition law

27) Trademark filing - elements and procedure

28) Trademark protection

29) Limitations of trademark protection

30) Exhaustion of trademark rights

31) Trademark infringement - remedies

32) Copyright - content and creation

33) Copyright - personal and financial rights

34) Neighbouring rights - definition, types, importance

35) Collective right management - major organisations

36) Collective right management directive - main concepts

37) Exceptions under copyright protection

38) Patents - definition, protection period

39) Patents - content of right, the relevance of claims

40) Supplementary Protection Certificate (SPC)

41) Special legal questions of biotechnological inventions

42) Compulsory licensing

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