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INTELLECTUAL PROPERTY

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F. SCOTT KIEFF • RALPH NACK



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**INTERNATIONAL, UNITED STATES,
AND EUROPEAN
INTELLECTUAL PROPERTY**

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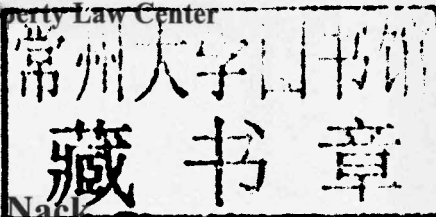
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INTELLECTUAL PROPERTY

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ABOUT THE ONLINE ADDENDUM

An online addendum has been created for this book to make available certain sections that are not included in the bound volume. The online addendum includes: (1) those sections that are designated in the Table of Contents with a page number of “Online”; and (2) full, unabridged versions of those US materials that are designated in the Table of Contents with an asterisk, which have been provided in abridged form in the bound volume.

The online addendum can be found at www.aspenlawschool.com/kieff_nack_intellectualproperty

ABOUT THIS BOOK

Intellectual property is one of the most dynamic law disciplines. It is undergoing exponential changes, characterized by new statutes, judicial and administrative decisions, and ever growing practical business impact worldwide. Despite the wealth of available excellent works about intellectual property law, the aim of this truly international book is to fulfill the long-standing need for a complete and comprehensive volume covering all areas of IP law from a global, European, and U.S. perspective. It has been developed over six years of teaching a full International IP curriculum at the Munich Intellectual Property Law Center (MIPLC) as an innovative and unique collection designated for general use in academia and private practice for a worldwide IP community. This book aims to meet the needs of both students and professionals interested in intellectual property law as an easy-to-use reference source.

The book is innovative in terms of content and presentation. Regarding content, the book is divided in four sections. Part A is devoted to a presentation of the “general part” of International IP law: the laws of the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), and the European Union, which set the framework for many important national and international provisions. Included are the Paris Convention, the TRIPS agreement, and – from a European perspective – Articles 81 and 82 of the EC Treaty. For easy understanding, the difficult contractual networks of the World Trade Organization and the European Union have been outlined in clearly arranged charts. Part B gives a comprehensive presentation of all areas of IP law: patent, plant variety protection, copyright, trademark, and design law. Each chapter starts with the international treaties and conventions, followed by specific European and U.S. provisions. Part C is devoted to EC competition law. The book is rounded off with Part D providing selected statutes on IP arbitration. Regarding presentation, the layout has been optimized for maximum approachability and readability. For easy navigation, each body of laws has a separate index number printed on the top outer corner of each page. In addition, an online addendum has been created for this edition to make available certain sections that have been left outside of the bound volume in order to keep the bound volume of a physical size that is easy to carry in one hand.

ABOUT THE MIPLC

The Munich Intellectual Property Law Center (MIPLC) is a project of four partners from two continents: the Max Planck Institute for Intellectual Property, Competition and Tax Law (Munich, Germany); the University of Augsburg (Germany); the Technical University of Munich (Germany); and the George Washington University Law School (Washington D.C., U.S.). These institutions have joined their skills and resources in order to provide the best possible education and the most outstanding research in the area of intellectual property.

The MIPLC offers a Masters Program in Intellectual Property Law. This LL.M. Program – jointly administered by the four MIPLC partners – provides one year of full-time and intensive study of intellectual property law and related areas, leading to the award of the Master of Intellectual Property Law (LL.M. IP) degree by the University of Augsburg. The program is directed to university graduates in law, economics, engineering, or natural sciences from all over the world who want to work in the field of intellectual property, especially as attorneys, patent agents, judges, business experts, scientists, engineers, and university faculty members.

The classes, all held in English, not only cover all areas of European and International Intellectual Property, Competition, and Media Law, but also include topics from essential related fields such as economics and business administration.

The faculty is composed of faculty members and researchers of the co-operating partners as well as of teachers from other outstanding universities and practitioners with great practical experience.

Siemens Corp., Schering Corp., and the German Association for Industrial Property and Copyright Law (GRUR) have funded scholarships to pay for the tuition of MIPLC students.

ABOUT THE MIPLC

The Munich Intellectual Property Law Centre (MIPLC) is a joint venture between two universities, the Max Planck Institute for Intellectual Property, Copyright and Patent Law (MPPK) and the University of Applied Sciences (FH) in Munich. The MIPLC is a joint venture between two universities, the Max Planck Institute for Intellectual Property, Copyright and Patent Law (MPPK) and the University of Applied Sciences (FH) in Munich. The MIPLC is a joint venture between two universities, the Max Planck Institute for Intellectual Property, Copyright and Patent Law (MPPK) and the University of Applied Sciences (FH) in Munich.

The MIPLC offers a Master's programme in Intellectual Property Law (MIPLC) for students who have completed a Bachelor's degree in law or a related field. The programme is designed to provide students with a comprehensive understanding of intellectual property law, including patent, trademark, and copyright law. The programme is designed to provide students with a comprehensive understanding of intellectual property law, including patent, trademark, and copyright law.

The MIPLC is a joint venture between two universities, the Max Planck Institute for Intellectual Property, Copyright and Patent Law (MPPK) and the University of Applied Sciences (FH) in Munich. The MIPLC is a joint venture between two universities, the Max Planck Institute for Intellectual Property, Copyright and Patent Law (MPPK) and the University of Applied Sciences (FH) in Munich.

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The texts used in this book have been taken from official publications, as of October, 2009. The charts printed on pages 27 and 73 are the editors' work. Finally, despite careful review, errors and omissions may exist. Therefore, the editors would highly appreciate any comments and suggestions on how to improve this book. Comments may be sent to fskieff.91@alum.mit.edu or nack@gmx.de.

*F. Scott Kieff
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[†] Sections marked Online are available online at www.aspenlawschool.com/kieff_nack_intellectualproperty

* The U.S. Patent Act (35 U.S.C. §§ 1-318) is available in unabridged form online at www.aspenlawschool.com/kieff_nack_intellectualproperty

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* The Lanham Act and U.S. Copyright Act are available in unabridged form online at www.aspenlawschool.com/kieff_nack_intellectualproperty

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PART A:

INTERNATIONAL ORGANIZATIONS

1. Convention Establishing the World Intellectual Property Organisation (signed at Geneva on July 14, 1967 and as amended on September 28, 1979)

Article 1. Establishment of the Organisation

Article 2. Definitions

For the purposes of this Convention, the expression "Organisation" shall mean the World Intellectual Property Organisation (WIPO).
(a) "Convention" shall mean the Convention for the Protection of Literary and Artistic Works signed at Bern on September 9, 1886, including any of its revisions.
(b) "Paris Convention" shall mean the Convention for the Protection of Literary and Artistic Works signed at Paris on March 20, 1889, including any of its revisions.
(c) "Paris Union" shall mean the international Union established in the Paris Convention.
(d) "Union" shall mean the Paris Union, the Special Union and agreements concluded in relation thereto between the Paris Union and any other international agreement designed to promote the protection of intellectual property whose object is similar to that of the Paris Union.
(e) "Industrial designs" shall mean the designs relating to:
- literary, artistic and scientific works,
- inventions in all fields of human endeavour,
- applied arts,
- industrial designs,
- trademark, service marks and commercial names and designations,
- protection against unfair competition,
and all other rights resulting from intellectual activity in the industrial, scientific domain or artistic field.

Article 3. Objectives of the Organisation

The objectives of the Organisation are:
(a) to promote the protection of intellectual property throughout the world through co-operation among States and, where appropriate, in collaboration with any other international organisations;
(b) to secure administrative co-operation among the Unions.

Article 4. Functions

In order to attain the objectives described in Article 3, the Organisation, through its organs, shall promote and assist in the completion of each of the Unions.
It shall promote the development of co-operation designed to facilitate the efficient protection of intellectual property throughout the world and to harmonise national legislation in this field.

I.
**THE WORLD INTELLECTUAL PROPERTY
ORGANIZATION**

1. Convention Establishing the World Intellectual Property Organization (Signed at Stockholm on July 14, 1967 and as amended on September 28, 1979)

Article 1. Establishment of the Organization

The World Intellectual Property Organization is hereby established.

Article 2. Definitions

For the purposes of this Convention:

- (i) "Organization" shall mean the World Intellectual Property Organization (WIPO);
- (ii) "International Bureau" shall mean the International Bureau of Intellectual Property;
- (iii) "Paris Convention" shall mean the Convention for the Protection of Industrial Property signed on March 20, 1883, including any of its revisions;
- (iv) "Berne Convention" shall mean the Convention for the Protection of Literary and Artistic Works signed on September 9, 1886, including any of its revisions;
- (v) "Paris Union" shall mean the International Union established by the Paris Convention;
- (vi) "Berne Union" shall mean the International Union established by the Berne Convention;
- (vii) "Unions" shall mean the Paris Union, the Special Unions and Agreements established in relation with that Union, the Berne Union, and any other international agreement designed to promote the protection of intellectual property whose administration is assumed by the Organization according to Article 4(iii);
- (viii) "intellectual property" shall include the rights relating to:
 - literary, artistic and scientific works,
 - performances of performing artists, phonograms, and broadcasts,
 - inventions in all fields of human endeavor,
 - scientific discoveries,
 - industrial designs,
 - trademarks, service marks, and commercial names and designations,
 - protection against unfair competition,
 - and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Article 3. Objectives of the Organization

The objectives of the Organization are:

- (i) to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization,
- (ii) to ensure administrative cooperation among the Unions.

Article 4. Functions

In order to attain the objectives described in Article 3, the Organization, through its appropriate organs, and subject to the competence of each of the Unions:

- (i) shall promote the development of measures designed to facilitate the efficient protection of intellectual property throughout the world and to harmonize national legislation in this field;

(ii) shall perform the administrative tasks of the Paris Union, the Special Unions established in relation with that Union, and the Berne Union;

(iii) may agree to assume, or participate in, the administration of any other international agreement designed to promote the protection of intellectual property;

(iv) shall encourage the conclusion of international agreements designed to promote the protection of intellectual property;

(v) shall offer its cooperation to States requesting legal-technical assistance in the field of intellectual property;

(vi) shall assemble and disseminate information concerning the protection of intellectual property, carry out and promote studies in this field, and publish the results of such studies;

(vii) shall maintain services facilitating the international protection of intellectual property and, where appropriate, provide for registration in this field and the publication of the data concerning the registrations;

(viii) shall take all other appropriate action.

Article 5. Membership

(1) Membership in the Organization shall be open to any State which is a member of any of the Unions as defined in Article 2(vii).

(2) Membership in the Organization shall be equally open to any State not a member of any of the Unions, provided that:

(i) it is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice, or

(ii) it is invited by the General Assembly to become a party to this Convention.

Article 6. General Assembly

(1)

(a) There shall be a General Assembly consisting of the States party to this Convention which are members of any of the Unions.

(b) The Government of each State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(2) The General Assembly shall:

(i) appoint the Director General upon nomination by the Coordination Committee;

(ii) review and approve reports of the Director General concerning the Organization and give him all necessary instructions;

(iii) review and approve the reports and activities of the Coordination Committee and give instructions to such Committee;

(iv) adopt the biennial budget of expenses common to the Unions;

(v) approve the measures proposed by the Director General concerning the administration of the international agreements referred to in Article 4(iii);

(vi) adopt the financial regulations of the Organization;

(vii) determine the working languages of the Secretariat, taking into consideration the practice of the United Nations;

(viii) invite States referred to under Article 5(2)(ii) to become party to this Convention;

(ix) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(x) exercise such other functions as are appropriate under this Convention.

(3)

(a) Each State, whether member of one or more Unions, shall have one vote in the General Assembly.

(b) One-half of the States members of the General Assembly shall constitute a quorum.

[110] CONVENTION ESTABLISHING WIPO

(c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of States represented is less than one-half but equal to or more than one-third of the States members of the General Assembly, the General Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the following conditions are fulfilled. The International Bureau shall communicate the said decisions to the States members of the General Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of States having thus expressed their vote or abstention attains the number of States which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of subparagraphs (e) and (f), the General Assembly shall make its decisions by a majority of two-thirds of the votes cast.

(e) The approval of measures concerning the administration of international agreements referred to in Article 4(iii) shall require a majority of three-fourths of the votes cast.

(f) The approval of an agreement with the United Nations under Articles 57 and 63 of the Charter of the United Nations shall require a majority of nine-tenths of the votes cast.

(g) For the appointment of the Director General (paragraph (2)(i)), the approval of measures proposed by the Director General concerning the administration of international agreements (paragraph (2)(v)), and the transfer of headquarters (Article 10), the required majority must be attained not only in the General Assembly but also in the Assembly of the Paris Union and the Assembly of the Berne Union.

(h) Abstentions shall not be considered as votes.

(i) A delegate may represent, and vote in the name of, one State only.

(4)

(a) The General Assembly shall meet once in every second calendar year in ordinary session, upon convocation by the Director General.

(b) The General Assembly shall meet in extraordinary session upon convocation by the Director General either at the request of the Coordination Committee or at the request of one-fourth of the States members of the General Assembly.

(c) Meetings shall be held at the headquarters of the Organization.

(5) States party to this Convention which are not members of any of the Unions shall be admitted to the meetings of the General Assembly as observers.

(6) The General Assembly shall adopt its own rules of procedure.

Article 7. Conference

(1)

(a) There shall be a Conference consisting of the States party to this Convention whether or not they are members of any of the Unions.

(b) The Government of each State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(2) The Conference shall:

(i) discuss matters of general interest in the field of intellectual property and may adopt recommendations relating to such matters, having regard for the competence and autonomy of the Unions;

(ii) adopt the biennial budget of the Conference;

(iii) within the limits of the budget of the Conference, establish the biennial program of legal-technical assistance;

(iv) adopt amendments to this Convention as provided in Article 17;