TEACHING OF INDUSTRIAL PROPERTY IN THE FEDERAL REPUBLIC OF GERMANY

by
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Memorandum on the Placing of Increased Emphasis on Industrial Property and Copyright Law in University Education

The Board of the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law concerned itself among other things at its February 1977 session with the unsatisfactory situation that has for years existed in connection with the teaching of industrial property and copyright law at German Universities. The result of its discussions and recommendations was set down in a memorandum which, after analyzing the situation within the country and abroad, advocates the placing of greater emphasis on industrial property and copyright in university teaching. The memorandum, to which all the members of the Board subscribed, was submitted in September 1977 by the Chairman of the Max Planck Institute to the conference of Ministers of Justice, to the Permanent Conference of Ministers of Culture, to the Federal Minister of Justice and to the Congress of Law Faculties, with the request that the considerations and recommendations set down in the memorandum should be taken into consideration in any further discussions on the provision of legal training. The text of the memorandum is as follow:

For several decades industrial property law and copyright law were subjects that had a significant place in university teaching in Germany; noted legal teachers have specialized in intellectual property law. The importance of these subjects is reflected in the wealth of scientific literature available, which also includes a great number of these and dissertations. According to the examination rules, the compulsory syllabus included at least the basic elements of industrial property and copyright law.

The 1971 reform of the regulations on law examinations broke with this tradition: Apart from mere vestiges, the subject have disappeared completely, and are no longer even mentioned in the optional syllabus. For instance, in the Bavarian regulations on law studies and examinations, competition law alone is mentioned in Optional Subjects Group 6, which covers no less than the following:

- Commercial and corporation law,
- Competition and monopolies law,
- Basic principles of exchange law,
- Basic principles of accountancy and tax law.

Other countries seem to have recognized the growing importance of Industrial Property (CEIPI) was set up within the Law Faculty of Strasbourg University more than ten years ago; it offers a one-year course with the award of a diploma at the end and trains between 40 and 60 professionals annually to meet the growing demand in economic, legal and administrative circles, not to mention the European Patent Office. There are other studies centers in Lyons, Grenoble, Montpellier and Paris where, as in Strasbourg, the title of "Docteur en propriété industrielle" may be acquired after special post-diploma studies. At all the major universities, intellectual property law is an individual optional subject for the law degree, independent of commercial law.

In Austria, according to the Government Bill for a Federal Law on the study of legal science, presented in the Autumn of 1974, the basic principles of intellectual property law are included among the compulsory subjects.

In Sweden, even now, 7 to 8% of the compulsory area of private law is taken up by copyright and patent, trademark and competition law, apart from which there is a five-month optional course for these subjects alone, which ends with a lengthy written dessertation.

In Spain industrial property law is currently emerging from the confines of commercial law to become an independent subject area; three chairs are already occupied by scientists whose main speciality is industrial property law. A specialized institute for the international protection of industrial property was founded recently, and the first specialized periodical is now in its second year.

Special importance is being attached to industrial property and copyright law in the university education programs of the Socialist countries. In Poland for instance, alongside a central institute devoted to training and research in Cracow, there are special chairs or lectureships on industrial property law in all universities, even the smaller ones, and it is a compulsory subject in engineering as well as in law faculties. The situation is similar in the Soviet Union and the German Democratic Republic, where increasing importance is being attributed primarily to the law of inventions and patents within the framework of academic teaching. In the German Democratic Republic, however, even copyright is a compulsory subject featuring in the written and oral examinations.

Finally, it is revealing to note the developments in Japan, where successful efforts have been made during the last fifteen years to introduce intellectual property law, which previously was taught only by a few scientists, as an independent subject. At all major Japanese universities there are now scientists in the law faculties who concern themselves either exclusively or predominantly with intellectual property law. Without exception they have studied in the Federal Republic of Germany or in the United States of America, and recently they joined together in a scientific association for intellectual property law. At all the major universities this subject is a separate optional subject alongside commercial law and corporation law. Efforts are being made to have it included among the compulsory subjects.

Proper coverage of industrial property and copyright in German universities requires at the very least that an individual optional subject group be created for this subject alone in the legal teaching and examination programs. With this in mind, the proposal made in February 1977 by the Munich University law faculty to the Congress of Faculties, to the effect that the existing Optional Subjects Group 6 should be divided into two groups, is particularly worthy of law as well as tax law and accountancy, supplemented perhaps also by the law on financial transactions and banking and on insurance contracts. The second group would then cover German and European monopolies law, the law on unfair competition, industrial property and copyright. This subdivision is not only dictated by the subject matter itself--it comprises legal areas that are organically related and have hitherto been dealt with together--it would also restore the necessary balance with the other optional subject groups, which for most part contain a substantially more restricted subject matter for teaching and examination than the existing Optional Subjects Groups 6.

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