

The Max Planck Institute For Foreign and International Patent, Copyright, and Unfair Competition Law

(In April The International Lawyer published an article on the Max Planck Institute for Foreign Public Law and International Law at Heidelberg. This article describes the work of a new Max Planck Institute in Munich which will begin publication of an English language periodical including an English language version of its card-index-research system in 1970. Ed.)

Introduction

The Max Planck Institute for Foreign and International Patent, Copyright and Unfair Competition Law is probably the world's leading Institute for work in its field, which is generally that of intellectual property; it includes industrial property (patent, trade mark, and unfair competition law), copyright law, and antitrust law problems relating to intellectual property. At present, the principal projects of the Institute include revision of the international agreements in the fields in which the Institute functions, studies of the relevant laws of the East European and developing countries, and the harmonization of the laws of the countries of the Common Market in these fields.

The Institute is new as a Max Planck Institute (hereafter MPI), having begun formal operations on March 1, 1966, but it is functionally the continuation of a University Institute established in 1952. The Institute attacks its tasks by the use of a substantial full-time research staff, and by effective cooperation between senior and

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junior scholars for which the Max Planck Institutes are well known.

The Institute spends about 25 per cent of its efforts on patent, 25 per cent on copyright, 35 per cent on trade-mark and unfair-competition law, and 15 per cent on antitrust problems related to the field of intellectual property. One of the major functions of the Institute is the commercial publication of a particularly useful card-index-research system in which the cards contain references not only to decisions, but also to statutes and literature, and cover—with varying degrees of intensity—all the countries of the world. In order better to serve the English-speaking world, the Institute has made plans to begin publication of an English-language periodical, “International Review of Industrial Property and Copyright Law,” which will include an English-language version of its card-index-research system early in 1970.

History

The Institute did not begin to function as an MPI until March 1, 1966, but it had its operational origin in a University Institute established in 1952 by Eduard Reimer, who was president of the German Patent Office and an honorary professor of the University of Munich. Since the facilities of the Institute were located in the Patent Office building until the fall of 1967, it was able to maintain close contact with the patent and trade-mark practice of the Federal Republic.

Although the Max Planck Institute took over the original work of the University Institute in 1966, the University Institute still survives, and now has a new field of concentration: the German rather than the foreign law of intellectual property. Although the budgets of the new MPI and the converted University Institute are separate, the two Institutes are quite integrated in practice.¹ Professors Eugen Ulmer and Friedrich-Karl Beier are directors of both the University

¹ The Max Planck Association, originally known as the Kaiser Wilhelm Association, was founded in Berlin in 1911. It is a private organization for the advancement of science, which now receives between 80% and 90% of its funds from government sources. It maintains about fifty research Institutes which are divided into three sections; a Biological-Medical Section, a Chemical-Physical-Technical Section, and an Arts and Social Sciences Section. As a part of its Arts and Social Sciences Section, the Max Planck Association maintains five Institutes for legal studies. The oldest is the Institute for Foreign Public Law and International Law established in Berlin in 1924, and now situated in Heidelberg. Thereafter, come the Institute for Foreign and International Private Law, established in Berlin in 1926, now located in Hamburg; the Institute for European Legal History established in Frankfurt in 1964; the

Institute and the Max Planck Institute, and other staff members seem to work indiscriminately in either or both Institutes, although they are formally attached to only one.

The transformation of a University Institute into a Max Planck Institute² illuminates the distinctive features of an MPI. In the last analysis, the difference appears to be mainly, but not exclusively, a matter of finance. The Max Planck Institutes are Germany's leading research Institutes. They are designed to do basic research of the highest quality and to get results. The Germans know that this type of research requires adequate financing. For the Munich Institute, this conversion meant a tripling of its staff,³ a substantial increase in its library, and a new building to accommodate increased staff and library.

The financing system of the Max Planck Association is more flexible than that of the University Institutes. Funds can more easily be transferred from one budget item to another to meet actual needs as they arise. It is also possible to get additional funds for special purposes. If the Director of a University Institute needs to purchase a set of books for 20,000 DM or to take an expensive trip, he may sometimes be lucky to get the item into the budget for the following year. The Director of the Max Planck Institute may, however, get approval by telephone the next day. The importance of financing to effective research can hardly be overestimated.

In addition, the conversion of the University Institute brought about the possibility of closer cooperation with the other MP Institutes, e.g., on problems of structural organization, methods of choosing and executing research projects, and methods of building a comparative-law library. The world-wide reputation of the Max Planck Association makes it easier to establish and maintain contact with foreign scholars. The five MP Legal Institutes, although they are formally independent of the universities, have managed to obtain or

Institute for Foreign and International Patent, Copyright, and Unfair Competition Law, described in this article; and the Institute for Foreign and International Criminal Law established in Freiburg in July 1966. The author has published an article on the *Institute for European Legal History* in 22 Sw. L. J. 397 (1968); on the *Institute for Foreign and International Criminal Law* in 16 Am. J. Comp. L. 247 (1968); and on the Institute for Foreign and International Law which is to appear in the summer 1969 issue of the *Alabama Law Review*.

² A similar change was made in the case of the Freiburg Institute for Criminal Law. See Riegert, *The Max Planck Institute for Foreign and International Criminal Law*, 16 Am. J. Comp. L. 248ff (1968).

³ The staff of the MPI taken alone is about twice that of the University Institute.

retain most of the advantages of a University Institute, principally the power to play an important role in the granting of university degrees. This is so because the Directors of all of the Legal Institutes are at the same time professors of the universities, near which their Institutes are located, and a substantial number of other members of the Institutes hold faculty positions (full professorships, honorary professorships, assistant professorships) at these universities.

The Munich University Institute was continued alongside the MPI, partly because the study of German copyright and industrial-property law is closely connected with the teaching in these fields. Whereas the MP Institute is primarily a research Institute which trains some advanced scholars, the University Institute combines the research with teaching functions involving substantial numbers of undergraduate law students of the University of Munich. The funds provided by the State for the University Institute are also a benefit to the MP Institute in that they relieve it of the burden of doing work in German law.

Staff and Organization

The Institute has only two senior Members, Professor Ulmer, its Director, and Professor Beier, its Assistant Director, both of the faculty of the University of Munich. The staff structure includes eleven "Referenten" (full-time younger lawyers, three of whom are assigned to the University Institute), and eighteen assistants (part-time legal interns, four of whom are assigned to the University Institute).⁴ The Institute has just employed Miss Winzenberger as editor and translator for its English language periodical.

The Institute is organized into departments (or working groups) for foreign countries, for numerous legal topics of special interest to the Institute, and for several phases of administration. Such a department may be headed by one or several "Referenten," having no assistants or as many as five; as is the case with the U.S.A. department. The countries covered are (1) Germany (including East Germany); (2) Austria and Switzerland; (3) the Scandinavian Countries; (4) France; (5) Benelux; (6) Italy; (7) Spain, Portugal and Latin

⁴ Those employed by the University Institute have somewhat different conditions of employment. For example, since all universities in Germany are State-owned, their employees are State employees, and acquire seniority for other State employment later.

America; (8) Great Britain and the Commonwealth; (9) U.S.A.; (10) Russia and East Europe; and (11) other countries. The legal subjects for which the Institute has separate departments are: (1) patent law and the law of utility models;⁵ (2) copyright law and the law of designs;⁶ (3) trade mark and unfair competition law; (4) antitrust law; (5) employee inventors and license contracts; (6) international agreements, international law, and conflict of laws; (7) law of the European Communities; (8) special problems of developing countries; (9) law of food and drugs; and (10) economics. There are only two administrative departments, one for the administration of the two Institutes and one for the library, documentation, and publications.

Activities of the Institute

The Institute devotes its attention to its various endeavours in the following proportions: (1) Scanning current literature and preparing abstracts and reports for publication in the Periodicals and in the card-index-research system (25%); (2) Publication of two international journals, the German-language Periodical "Gewerblicher Rechtsschutz und Urheberrecht—Internationaler Teil" (Industrial Property and Copyright Law—International Section) and the English-language Periodical "International Review of Industrial Property and Copyright Law" (15%); (3) Comparative Studies (including group projects) (25%); (4) Studies relating to law reform (10%); (5) Giving legal opinions on specific questions (10%); and (6) Preparing for and participating in conferences and meetings of scientific and professional societies (15%). These activities are described in more detail below. About 30% of the energy of the Institute is consumed in the training of young scholars who later will become professors, or accept positions of responsibility with the government, international organizations or in private industry. One Referent recently left the Institute to join the Commission of the Common Market, where he is working on the harmonization of the European laws of industrial property and unfair competition. Two members will become university professors in the near future.

⁵ "Gebrauchsmusterrecht". This is a sort of miniature patent law for utility patents, which does not exist in the United States.

⁶ "Geschmacksmusterrecht". This special copyright protection for designs is not the same as the protection of design patents in the United States.

Scanning Current Literature and Preparing "Reports" for Publication in the Periodicals and in the Card-Index Research System of the Institute. The card-index research system of the Institute is in some ways considerably more useful than anything we have in wide usage in the United States today. Preparations are under way to adapt the present system to electronic data storage and retrieval methods. At present, the system indexes in one place court decisions, statutes, books, and articles dealing with each separate point of law. Furthermore it is not like West's General Digests in that one must search a series of volumes covering different time periods in order to find what one wants, but all the material is found under the appropriate heading in the card-index regardless of date. The MPI-index resembles a single volume, continuously up to date, West General Digest.

Construction of the index proceeds as follows: The members of the Institute scan the current legal literature, including cases and statutes and prepare abstracts or notes on all items of interest. At present the Institute subscribes to 52 German and 220 other periodical publications.⁷ Literature which the Institute does not ordinarily purchase is kept under surveillance by other means; e.g., by the use of the Index to Legal Periodicals or with the assistance of foreign observers.

The items gathered in this way are called "reports" (Berichte) and are prepared on small cards. Each "report" is classified according to the country and according to the relevant points of law; the classification numbers appear in the upper right hand corner of the card. The Institute has gradually developed a decimal classification system which resembles the West key-number system. The MPI-classification-system will be available in English in vol. 1 of the Periodical "International Review of Industrial Property and Copyright Law" at the beginning of 1970. The individual "reports" (abstracts of reference notes) are gathered and published monthly as "GRUR-Berichte" (GRUR-Reports) in the German-language Periodical "GRUR-Int."⁸ (Industrial Property and Copyright Law—International Section). They provide a comprehensive view of current developments. In the future, a selected portion of the German-language "GRUR-Reports" will appear as "IIC-Abstracts" in the

⁷ Official Gazettes, Court Decisions, Law Reviews, etc.

⁸ "Gewerblicher Rechtsschutz und Urheberrecht-Internationaler Teil". The abbreviation GRUR originates from this title.

English-language "International Review of Industrial Property and Copyright Law".⁹

The "GRUR-Reports; are also published separately on cards as part of the permanent card-index-research system. There are ordinarily 400 to 500 such cards printed each month. A year's subscription price is only 470 DM (about \$118). At present there are approximately 120 subscribers. About 70 of these are legal departments of large companies, about 35 are "patent attorneys"¹⁰ and lawyers, and about 15 are libraries and academic institutions. In the case of legislation, the "reports" contain usually only the title of the law, the date it was passed, the date it is to take (or took) effect, and the publications and the places where it is reprinted in the original language or in translation. In the case of books, the "reports" usually contain only the bibliographical information and the price of the book. Of course the classification numbers under which the book is filed give information as to the subjects dealt with in the book, as they do for the statutes, articles and decisions. The general content of articles is usually indicated by several sentences. The "reports" on decisions are the most extensive. The facts, decision, and reasoning are usually given clearly and concisely in adequate detail in one to three paragraphs.

The index cards are ordinarily filed according to country and, within the countries, according to points of law. For purposes of comparative studies it is more useful to file them according to points of law and within each point of law according to the country. Thus the Institute maintains two sets, one filed each way. The index sets at the Munich Institute contain, in addition to the regularly printed cards, about 20 percent type-written cards covering items which were not considered sufficiently important to be printed and included in the commercially issued sets.

About 10 per cent of all "reports" come from outside informants under contract to the Institute rather than from members of the regular staff. This is the case where it is difficult to secure the literature of the country involved (e.g. India), or where members of the Institute are not familiar with the language of the country involved (e.g., Finland, Hungary, Yugoslavia). The Institute has, for

⁹ The abbreviation "IIC" originates from the title "International Review of Industrial Property and Copyright Law".

¹⁰ A German "patent attorney" is not a member of the regular bar but only of a special patent bar. His training is more technical than legal.

example, an agreement with the general counsel of a state-owned East European firm, under which the general counsel supplies the Institute with "reports" from his country. Since the legal staff of the firm must follow these developments anyway, and the general counsel speaks German as well as the native language, the system is efficient and inexpensive.

Publication of the German-Language Periodical "Gewerblicher Rechtsschutz und Urheberrecht—Internationaler Teil." (Grur-Int.). This periodical appears monthly and is edited in the Institute by its two Directors. It usually consists of about 60 pages and contains articles, reports, international treaties and national legislation, documents, texts of a few important court decisions, book reviews, and about 200 of the classified "GRUR-Berichte" discussed above.¹¹

Publication of the English-Language Periodical "International Review of Industrial Property and Copyright Law" (IIC).—This periodical is edited by the Institute and will appear quarterly, starting in 1970. It will consist of about 60 pages and emphasize topics and decisions of international importance. In keeping with the contents of the German-language periodical "GRUR-Int.," this new periodical will include articles, reports, texts of a few important court decisions, book reviews, and under the heading of "ICC-abstracts" about 200 items mentioned earlier. In addition to translations of selections from the German-language "GRUR-Int.," the English-language periodical will also contain some manuscripts not published elsewhere. Contributions to IIC will be made by experts in various countries who are actively engaged in work relevant to the topic under discussion, as well as by members of the Institute.

Comparative Studies (Including Group Projects).—The Institute presently has three series for the publication of German-language monographs and similar works based on studies conducted or supported by the Institute. In the series of publications concerning *Industrial Property*, ("Schriftenreihe zum gewerblichen Rechtsschutz"), eighteen volumes have already been published. The four most recent

¹¹ When these are printed on cards, some of them have to be printed several times because they are applicable to several points of law and one copy must be filed under each point of law. For this reason 200 "GRUR-Reports" printed in the Periodical may represent 400 to 500 cards.

ones¹² concern (a) a comparative study of the protection of products covered by process patents, (b) the protection of business against unlawful interferences, (c) comparative advertising, and (d) patent protection for developing countries.

The last four volumes¹³ in the series of *Copyright Publications* (Urheberrechtliche Abhandlungen") treat the topics of (a) copyright protection of computer programs, (b) copyright contracts in French law, (c) copyright options, and (d) moral rights of the author.

The third and most recent series, *GRUR-Monographs* ("GRUR-Abhandlungen"), consists mainly but not exclusively of reprints of articles from the German-language GRUR Periodical or of a collection of articles on the same subject. The first volumes¹⁴ cover (a) French trade mark law, (b) the Scandinavian laws of unfair competition, and (c) patenting and licensing under US Government research and development contracts.

Studies Relating to Law Reform.—The Institute is engaged in a number of comparative studies relating to law reform. The most elaborate and one of the most important of these is a comparative study, conducted under contract for the Commission of the European

¹² (a) J. Hahn, "Der Schutz von Erzeugnissen patentierter Verfahren", 1968 (Protection of Products covered by Process Patents).

(b) P. Katzenberger, "Recht am Unternehmen und unlauterer Wettbewerb", 1967 (Protection of a Business under the Law of Torts and the Law of Unfair Competition).

(c) H. Eichmann, "Die vergleichende Werbung in Theorie und Praxis", 1967 (Comparative Advertising Methods).

(d) "Patentschutz und Entwicklungsländer—Dokumente und Materialien", 1966, Introd. H. G. Heine, R. Moser von Filseck (Patent Protection and Developing Countries—Documents and Materials).

¹³ (a) R. Köhler, "Der urheberrechtliche Schutz der Rechenprogramme", 1968 (Copyright Protection of Computer Programs).

(b) H. Schadel, "Das französische Urhebervertragsrecht", 1966 (Copyright Contracts in French Law).

(c) M. Brandi-Dohrn, "Der urheberrechtliche Optionsvertrag", 1966 (Options in Copyright Contracts).

(d) A. Dietz, "Das Droit Moral des Urhebers im neuen französischen und deutschen Urheberrecht", 1968 (Moral Rights of an Author in the new French and German Copyright Laws).

¹⁴ (a) P. Mathély, "Das neue französische Markenrecht", 1967 (The New French Trademark Law).

(b) W. E. von Eyben, K. Heinonen, J. Storm Bull, H. Bergqvist, S. Tengelin, "Das Recht des unlauteren Wettbewerbs in den nordischen Ländern, 1967 (Unfair Competition Laws in Scandinavia).

(c) F. Goetze, "Die Regelung von Patent—und Lizenzfragen in Forschungs—und Entwicklungsverträgen der Amerikanischen Regierung", 1968 (Patenting and Licensing under U. S. Government Research and Development Contracts).

Economic Community (Commission of the European Communities) on the law of unfair competition in the countries belonging to the Common Market, with the aim of providing background data for unifying those laws. The German and French versions of this work consist of six volumes each, the Italian of two and the Dutch version of three volumes each. Of the German and French versions, Volume I contains a comparative presentation, Volume II-1 the laws of Belgium and Luxemburg, Volume II-2 of Holland, Volume III of Germany, Volume IV of France, and Volume V of Italy. The complete German and Italian editions have appeared. Volume I is available now also in French and Dutch; the remaining translations are in preparation. Other comparative studies have been requested by German ministries, international authorities, private parties, and even a foreign government.

Giving Legal Opinions in Individual Cases.—Since the areas in which the Institute functions are of great practical importance, and since there are few other authoritative sources of information in Germany, the Institute and its members receive many requests for opinions concerning individual cases. About 70 per cent of these requests come from industry through house counsel and private practitioners. The remaining 30 per cent come from government and other official sources. The responses are Institute products rather than simply the work of an individual staff member. Typically they are initially prepared by the competent specialists of the Institute¹⁵ in collaboration with the Director or Assistant Director who is responsible for their accuracy. Opinions are charged on the basis of time required and importance of the matter. The charges for an opinion vary from very little to several thousand marks. Opinions are also occasionally given by Professor Ulmer or Professor Beier on a private basis.

Preparation for and Participation in International Conferences.—The Institute is active in participation in conferences and professional meetings. The law in the areas in which the Institute works is to a considerable extent in flux, and the results of these meetings

¹⁵ The opinions are usually assigned to the specialist for the country involved who will also consult the specialist for the subject matter involved. Opinions involving several countries may be given to the subject-matter specialist who may then consult with the specialist for the countries involved if he wishes.

are likely to exert an influence on its development, both national and international. In the summer of 1967, for example, a particularly important conference was held in Stockholm, the Intellectual Property Conference, sponsored by BIRPI. Its purpose was to revise the Bern Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property. At this diplomatic conference, a new international agreement was signed, the Stockholm Convention Establishing the World Intellectual Property Organization. In Stockholm, Professor Ulmer was appointed President of the section dealing with copyright law.

The considerable attention which the Institute devotes to this aspect of its activities can be seen from a sampling of the most important conferences and meetings in which it participated in 1968 and 1969: 1. Antitrust Working Group of the German Cartel Office, Berlin, March 1968 2. Meetings of the Executive Committee and the General Assembly of the Int. Assn. for the Protection of Literary and Artistic Property (Association Littéraire et Artistique Internationale—ALAD), Paris, April 1968 3. Conference of the International League against Unfair Competition, Prague, May 1968 4. Annual Meeting of the German Association of Industrial Property and Copyright Lawyers, Essen, September 1968 5. East-West Conference on Industrial Property, Vienna, October 1968 (Austrian Group of Int. Assn. f. Protection Industrial Property—AIPPI) 6. Working Group for Problems of Copyright involving Satellite Communications, Geneva, October 1968 (Bureaux f. Prot. Intellectual Property—BIRPI) 7. Conference on "Trends toward Harmonization and Unification of European Patent Law," Brussels, December 1968 (Practising Law Institute of New York at the Institute for European Studies in Brussels) 8. Extraordinary Session of the Permanent Committee of the International Union for the Protection of Literary and Artistic Works (BIRPI) and the Intergovernmental Copyright Committee (UNESCO), Paris, February 1969 9. Conference on the Harmonization of Business Law in Europe, Cologne, March 1969 (Cologne University, Institute for the Law of the European Communities) 10. Symposium on "Fair Trade and the Consumer," Cambridge, England, March 1969 (British Institute for Foreign and Comparative Law) 11. XXVII Int. Congress of the AIPPI, Venice, June 1969 12. Moscow Jubilee Symposium 1969 on Inventive Activity and Patent Retrieval, July 1969 (Committee for Inventions and Discoveries, Council of Ministers of the USSR). Members of the

Institute also participate regularly in the work of different German expert-committees established by the Ministry of Justice and German Association of Industrial Property and Copyright.

Library

The library is relatively small, due to the fact that it concentrates on literature dealing with the special subjects of the Institute. It nevertheless, represents a very good collection of German and foreign literature for these fields. It now has approximately 20,000 volumes and is expanding at the rate of 5,000 volumes per year. Increasing attention is being given to the literature of the East European countries.

Finances

Since the Munich MPI is still in a developing phase, the final amount of the annual budget cannot be predicted. Its budget for 1969 is 791.000,-DM.¹⁶ About 493,000 DM of this budget are for personnel costs, about 95,000 DM for the Library, about 20,000 DM for publication and documentation purposes and the rest for general expenses including the expense of renting the Institute's building. But the Institute as a whole actually has a considerably larger budget. The University Institute absorbs a substantial part of the costs. In addition, most of the MPI's eighteen assistants are paid out of scholarship funds of the Max Planck Association and, therefore, do not appear in the budget of the M.P. Institute. Its two Academic Members are Professors at the University and draw a substantial part of their salaries from the University.

Conclusion

This is the last of a series of five articles, one on each of the five Max Planck Institutes for legal research.¹⁷ Editors and friends have often expressed a desire for a more subjective evaluation in this series. I have preferred to put my major effort into painting the

¹⁶ The exchange rate is approximately 4 DM (Deutsche Mark=German Marks) to the dollar.

¹⁷ See note 1 *supra*.

picture Americans would have gotten, if they were able to speak the language and had been able to spend some time in the Institutes, and to leave the comparisons and evaluations mainly to them. It did not seem necessary to me to compel readers to look at the Institutes from my point of view when I could paint a picture clear enough to permit them to form their own points of view.

Although the research of the Max Planck Legal Institutes is limited to the fields of foreign and international law, it is entirely possible that their organizational form and research methods might be usable for legal research of other types, e.g., for social-fact-oriented research designed to make the law more responsive to the needs of modern societies. The articles have shown how these Institutes can be valuable not only as a source of the legal knowledge needed for day to day transnational transactions, but also perhaps even more valuable as aids in the process of national and international law reform—a process with which the Munich Institute is at present very much involved.

There has been no uniformity of opinion among American comparative law specialists as to the value of Institutes like the Max Planck Institutes for Foreign and International Law. The English language publications of the Munich Institute and the English language International Encyclopedia of Comparative Law, the work on which is being largely directed from the Hamburg Max Planck Institute for Foreign and International Private Law,¹⁸ will give American lawyers a chance to form a first hand opinion of some of the work of these Institutes. Of course, one might be impressed with the work of the Institute, but take the view that it could not be duplicated in this country. That question is beyond the scope of this paper, but my view is that we could if we wanted to, and that it would be economically feasible to do so.

¹⁸ See my article on the Hamburg Max Planck Institute for Foreign and International Private Law which is to appear almost simultaneously with this article in the summer issue of the *Alabama Law Review*.