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## **Opposition Proceedings for the Community Trademark - New Strategies in Trademark Law**

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In order to assess the Community trademark system, applicants are not only interested in discovering how European examiners evaluate the question of distinctive character and how high the registration fees for 15 countries are, but also in the number of obstacles and stumbling blocks that must be overcome before the trademark is finally registered.

One of these obstacles will be the opposition proceedings, in Alicante involving a considerable number of special features, which will be examined in the following.

### 1. Features of the Opposition Proceedings for the Community Trademark

#### a. Formal

In the field of the formalities, which are not to be examined in detail in the present article, attention is simply drawn to the following pitfalls:

- Opposition can only be filed in Alicante and not at any of the national offices.
- It appears to follow from Art. 42(3) of the Community Trademark Regulation, 1 Rule 15(2)(d) of the Implementing Regulation, 2 that the opposition must contain a reasoning when it is filed ("must be submitted in writing and specify the grounds"). The note on Rule 18(1) of the Implementing Regulation in the Guidelines on Opposition Proceedings of the Office for Harmonization of the Internal Market refers to the lack of reasoning as a ground for inadmissibility. However, the explanations on the opposition information sheet make it clear that the details required in the form are sufficient for admissibility and that a detailed legal justification can be submitted subsequently if it appears necessary.
- An important rule that is easily overlooked in light of the often regrettable variety of languages in use at the Office is that the language of the opposition, its reasoning and any other evidence must always be in one of the five languages of the Office (German, English, French, Italian or Spanish), pursuant to Rules 17(1), 22(4) of the Implementing Regulation. The language of the proceedings is the language of the application if this is one of the five languages of the Office, otherwise the second language specified in the application, which in such a case must be one of the five official languages. However, according to Rule 17(3) of the Implementing Regulation, the parties can subsequently agree on any other language for the proceedings.

An opposition submitted in one of the other official languages of the Community is therefore just as inadmissible as an opposition submitted without payment of the opposition fee. Consequently, it must be translated within the three-month opposition period (Art. 115(5) and (6) of the Community Trademark Regulation, Rule 17(1), Implementing Regulation, Guidelines 3.1). On the other hand, if documents, including those for the opposition, are submitted in another of the five languages of the Office that is not the language of the

proceedings, the translation can be submitted subsequently within a period to be specified (Rules 17(3), 16(3), 19(2), 20(2), 96(1) of the Implementing Regulation).

- In the event of a transfer of the rights, attention should be paid to the fact that the new proprietor can only file opposition proceedings once the change in status is entered in the register (Art. 17(6) of the Community Trademark Regulation). The application for the change of registration must at least be submitted before expiry of the opposition period (Art. 17(7) of the Community Trademark Regulation, Rule 15(2) c(iii) of the Implementing Regulation).
- Any other reasons for inadmissibility pursuant to Rule 15 of the Implementing Regulation can be remedied after expiry of the opposition period (Rule 18(2) of the Implementing Regulation).

## b. Grounds of Opposition

According to Art. 8 of the Community Trademark Regulation, the opposition can be based on earlier rights in any individual country of the Community. Consequently, a single national trademark can void the Community trademark for the entire European Union (Arts. 42, 43 of the Community Trademark Regulation). These rights can be:

- Community trademarks
- National or Benelux trademarks
- IR trademarks with effect in one Member State
- Well-known marks within the meaning of Art. 6bis of the Paris Convention and Art. 8(5) of the Community Trademark Regulation
- Earlier signs of more than mere local importance (e.g., trade names), if, according to the national law of the Member State, these entitle the proprietor to prevent the use of a more recent trademark. 3

Given this variety of possible rights throughout the entire EU, the opposition proceedings provide a very generous regulation of fees, since one opposition fee, currently ECU 350, allows the opponent to rely on several earlier rights at the same time, namely:

- A number of different trademarks of the same proprietor in the same country
- A number of the same or different trademarks of the same proprietor in different countries
- A number of registered and non-registered marks and/or trade names in the same country or in different countries. 4

For many applicants, this possibility will make it more difficult to obtain registration than under national trademark law, and, if this rule is maintained, Alicante may become a popular venue for conflicts of trademark interests.

## c. Refund of Costs

However, the advantages of a multiple opposition are tempered by the rule concerning the refund of opposition costs pursuant to Art. 81(2) of the Community Trademark Regulation. If an opposition is only successful on the basis of one of several trademarks, part of the applicant's costs can be imposed on the opponent. The opponent will therefore have to examine the trademark and the countries he selects for his opposition. In this, the decisive factor may be the different use situations or different lists of goods in the different countries. On the other hand, the imposition of a maximum of ECU 250 on the costs to be refunded will not represent a serious obstacle to the introduction of further trademarks as reasons for opposition, if this increases the chances to prevail in the opposition proceedings.

#### d. Special Features Concerning Contents of the Opposition

The legal reasoning will not be significantly different from that in German opposition proceedings. One particular feature applies to oppositions not based on registered trademarks but on earlier rights pursuant to Art. 8(4) of the Community Trademark Regulation. These rights are not mentioned in Art. 43(2) and (3) of the Community Trademark Regulation in connection with the requirement of evidence of use. Since in the case of these rights, the use is a constituent element of their enforceability, and consequently part of the admissibility examination, the conclusion is drawn that use must be submitted in the reasoning of the opposition in a form that can at least be verified.

Moreover, the opponent must expect that he will have to submit evidence of use if the grace period of his trademark has expired. Pursuant to Rule 22 of the Implementing Regulation, the Office will set a deadline for this, with the evidence stated in Rule 22(3) of the Implementing Regulation in conjunction with Art. 76(1)(f) of the Community Trademark Regulation. This also includes affidavits concerning the type and scope of use. This deadline will not expire before the deadline in Rule 19(1) of the Implementing Regulation, after which the applicant can decide whether and to what extent he intends to defend the trademark.

## 2. Applicant's Strategy in Opposition Proceedings

### a. Applicant's Options

Those applicants who use the application for a Community trademark as an inexpensive search method will be able to use the search report - which, however, does not cover Italy, France and Germany - as an initial basis for deciding whether to proceed with the application or to withdraw it in order to prevent its publication. However, they may also decide to wait until the expiry of the opposition period in the hope that some of the trademarks identified are not used and hence that no opposition is filed.

Once the search report has been received, the applicant may withdraw the application within one month, thus preventing publication and avoiding the refund of costs to the opponent (Arts. 39(6) and 81 the Community Trademark Regulation). Until now, oppositions were filed in approximately 20 % of cases, which, however, does not permit any general estimate in light of the few trademarks published. On the basis of German experience, it must be assumed that a large number of oppositions will be filed in certain categories. It will not be easy for the applicant to evaluate the relevance of the opposition from the different countries rapidly and reliably, if only because the likelihood of confusion in the case of an opposition based on a national trademark is to be judged according to the legal situation of the country in question.

The following considerations are therefore required:

- Does the applicant himself own earlier national rights that the opponent has overlooked?
- Can an application for cancellation of the opposing trademark for lack of distinctiveness be successful in the home country in the specific case?
- What is the scope of protection of the trademark or the other earlier right in the country of origin?
- Is the opposing trademark sufficiently used according to the law of its home country?

The considerations that result if the opposition can only be dealt with by a counter-attack are discussed in part 3 below.

b. Withdrawal and Negotiation Deadlines 7 according to which the Harmonization Office need not take account of facts and evidence submitted late. But it is recommended not to wait with this defense, since one cannot foresee how the Boards of Appeal will handle this question. The cooling-off period under Rule 19(2) of the Implementing Regulation is also of interest to the opponent, since the Office refunds the opposition fees if the trademark is withdrawn or a waiver is made with respect to the goods relevant for the opposition before expiry of the time limit (Rule 19(3) of the Implementing Regulation). This refund is not made if it is not the application but the opposition that is withdrawn. Nor are the opponent's attorney fees refunded.

The institution of the refund of costs in opposition proceedings, which from the German point of view would be better dispensed with, 9 since it can easily be misused in an attempt at financial blackmail, has still to prove its usefulness in practice. Without doubt, it puts pressure on the applicant to reach agreement with the opponent before the opposition proceedings proper begin, particularly if he is faced with a larger number of oppositions (Art. 81(3) of the Community Trademark Regulation).

### 3. Counterclaims of Applicant

It will not be rare for oppositions to be based on a national trademark that has a more recent priority in the country of origin than a national trademark held by the applicant identical to the Community trademark. Either this trademark was overlooked by the opponent or not regarded as relevant, or he is hoping for other evaluation criteria in the country of origin than in Alicante.

Example:

- On April 1, 1996, A registered trademark "Alpha" in Alicante.
- Opposition is filed based on a German trademark "Alf" with a priority date of April 1, 1990.
- A is proprietor of a German trademark "Alpha" with the same list of goods as the Community trademark and a priority of April 1, 1980.

The existence of an earlier national trademark, irrespective of whether seniority is claimed according to Art. 34 or 35 of the Community Trademark Regulation or not, does not give the Community trademark multiple priorities in the different countries. The priority date is the date of the filing of the application in Alicante or a priority pursuant to the Paris Convention claimed for this purpose. 10

What can A do?

- A can attack the opposing trademark in Germany.
- He can defend his trademark in opposition proceedings on the grounds of lack of similarity of the trademarks or a lack of similarity of the goods.

a) Assuming a similarity of goods, he will choose the first alternative of dealing with the opposing trademark. If he prevails in Germany, and the opposing trademark is canceled, the opposition proceedings are terminated. If the cancellation action is dismissed in Germany because the court denies either the similarity of the trademarks or the similarity of the

products, he can hope that the Harmonization Office will follow the opinion of the German court and dismiss the opposition. This is by no means certain, and certainly not if it is only a first instance decision.

b) Thus the question arises whether the applicant should choose the reverse strategy and first await a decision on the opposition. He could then, if the likelihood of confusion is upheld, use this decision for the proceedings in Germany. However, will the national courts be satisfied with a first instance decision of the Harmonization Office?

c) This uncertainty is an argument in favor of first exhausting all legal remedies in Alicante up to an appeal to the Court of First Instance of the European Court of Justice, since then he can rightly argue that this Court's decision construes European law which, by virtue of the Harmonization Directive 11 must be used for the construction of national law in the case of identical legal concepts such as the likelihood of confusion and similarity.

d) However, the applicant will encounter a problem if the Court of First Instance allows the opposition, and the decision becomes final. In such a case, the applicant may have the best arguments for a cancellation action in Germany, but has lost his Community trademark. The recommendation must therefore be to apply for a stay of proceedings in the first oral hearing before the court after the latter has expressed its legal opinion, and then to clarify the question of priority in the country of origin. In such a case, if the applicant in fact holds an earlier priority in the country of origin, the court will have to develop a generous stay-of-proceedings practice if it is not to pass "unjust" decisions with open eyes. According to national law, this problem may be settled by means of a reinstatement procedure. Whether such reinstatement is permissible on a European level has, at least for the field of patent law, been denied hitherto.

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#### 4. Problem of Acquiescence

Problems for the opposition proceedings may arise for all parties involved as a result of the statutory acquiescence regulation contained in Art. 53 of the Community Trademark Regulation and which has also entered national legislation via the Harmonization Directive. In German law, this legal institution was developed in case law by applying the rule of good faith in Sec. 242 of the Civil Code, 13 and there is no doubt that it will acquire considerable importance in European trademark law in the future.

a) It may apply to the opponent if under national law he has acquiesced to a more recent trademark held by the applicant and now files an opposition based on his earlier national trademark. There is no doubt that it is not Art. 53 of the Community Trademark Regulation but national law that applies in such a case. The question arises whether the national forfeiture rule, e.g., Secs. 21 and 52 of the new German Trademark Act, has the effect that the opponent is also prevented from asserting his national trademark rights against the identical Community trademark. Is the proprietor of the earlier national trademark also obliged to tolerate the Community trademark, which could then not be asserted at least in the country in question against his own trademark?

In light of the text of the German Act 14 and the completely different dimension of a Community trademark, the assumption will be that forfeiture will be restricted to acquiescence to the further use and the continuation of the German trademark's entry in the register, and that opposition against the Community trademark must be successful.

That this result is correct follows from the legal principle that the proprietor of the trademark is not obliged to abandon more than he has already abandoned. Consequently, the acquiescence to use and (national) registration will not permit the proprietor of the more recent trademark to extend his rights beyond the legal status quo. This conclusion was also reached by the German Federal Supreme Court in a factually different but legally similar situation, which was the basis for the MAN/G-man decision. <sup>15</sup>In this case acquiescence had entered into effect with respect to the use of a foreign trade name. However, the Federal Supreme Court rightly dismissed the argument that the proprietor of the earlier right must also tolerate the founding of a German subsidiary under this name.

b) The result could be different, if it is not a situation of national acquiescence, but if the opponent had agreed by contract, e.g., a delimitation agreement, to tolerate the registration and use of a certain mark. Even if the agreement was concluded only for one country, e.g., Germany, the opponent, who has promised not to use his national mark against his competitor, should be bound to this promise. This does not exclude that he can use other prior national marks that have not been included in the delimitation agreement as a basis for his opposition. But if he only owns one mark, or bases the opposition on the respective mark bound by the agreement, he can be forced to withdraw the opposition. Such a defense of inadmissibility raised by the applicant could, however, not be heard by the OHIM, but would have to be litigated before the national courts. In view of the fact that in examining countries, particularly in Germany, such delimitation agreements have been popular as a means to settle oppositions, a large number of such agreements exist, so that this question will certainly become greatly important in the future.

c) What would be the result in the reverse situation of acquiescence, if, as assumed in part 3 above, the applicant in Alicante holds an earlier national priority, the proprietor of the more recent national trademark files opposition and argues acquiescence as his defense against the applicant's national cancellation suit? Here too, the conclusion must be that by acquiescence only, further use and registration of the national trademark are protected, but the proprietor of the more recent trademark is not granted a kind of priority right that he could use to block a registration of the Community trademark.

However, the Harmonization Office cannot simply dismiss the opposition as unfounded. The result must be that, in face of the stubbornness of the proprietor of the more recent trademark, the defense of acquiescence in the national action must fail for equity reasons through teleological reduction of Sec. 51(2) of the New Trademark Act, and consequently the national court must grant the request to withdraw the opposition. Since bad faith is also one of the criteria for exclusion in incontestability of a trademark right, it will also have to be applied for judging misuse of the law in such cases where otherwise the assertion of acquiescence would be inequitable.

## 5. Future Practice of the Harmonization Office

At present, the Harmonization Office has not established a practice of its own, but it is appropriate to refer to certain matters that could facilitate proceedings for everyone involved.

### a. Multiple Oppositions by the Same Opponent

To begin with, we return to the oft-mentioned problem of multiple oppositions for the price of one opposition fee (Rule 15(1) of the Implementing Regulation). As yet it is certainly premature to judge the extent to which trademark proprietors will make use of this possibility. It cannot be ignored that this rule will create problems not only for the applicant but also for the Office. If the parties are competitors, they will not let this opportunity slip by to at least delay, if not prevent, the registration of a Community trademark. Given the large number of possible earlier rights in the 15 countries, opponent's will rarely waive the right to use all the possible trademarks from the different countries, registered or not registered, which will result in a considerable amount of work for the Office.

If such a practice emerges, the rule could be modified by:

- charging a separate fee for each trademark on which the opposition relies;
- charging a single fee for a number of parallel identical trademarks from different countries, but charging a separate opposition fee for each trademark in the case of more than one non-identical trademark within one country.

#### b. Stay-of-Proceedings Practice

From the point of view of the applicants, it is to be hoped that the Office will encourage settlements between the applicants and the opponents as far as possible, not only by seizing the initiative itself on the basis of Art. 43(4) of the Community Trademark Regulation, but also by means of a generous policy of extending the negotiation time limit according to Rule 19(2) of the Implementing Regulation, if this is desired by both parties.

(1) However, one should not ignore the fact that this rule is easy to handle between parties who are in agreement. Problems can arise in practice, however, if the opponent does not agree, or if more than one opponent is involved. It can easily be imagined that one opponent may refuse to consent to an extension of the time limit agreed on with another opponent, because he regards his trademark as much more similar to the applicant's mark and because he is interested in a rapid termination of the opposition proceedings. The Regulation does not cover this situation. The Office can then only issue a discretionary ruling pursuant to Rule 21(2), and stay all other opposition proceedings. It must, however, be expected that the OHIM will not decide a stay if it regards another opposition as more promising.

(2) According to the Guidelines for the opposition proceedings, the other oppositions can be stayed even without request after a first examination, if it is probable that the application will be dismissed on the basis of one opposition. There is no appeal against the staying order. In the event of doubt of the final outcome, and this certainly includes the case of several equally close trademarks, the oppositions will be treated parallelly according to the Guidelines. This can result in an unnecessary burden on the applicant if he must negotiate with several parties simultaneously, despite the fact that he is the one who can best judge which of the trademarks is the most troublesome for him, thus making all the other oppositions obsolete.

(3) The applicant will particularly wish for a stay in proceedings in cases in which cancellation proceedings have been or will be filed against national trademarks and where the applicant is interested in preventing a negative decision of the Office becoming final. There are no rules concerning the minimum or maximum duration of a stay of proceedings, with the

result that the Office can decide at its own discretion. If it denies the likelihood of confusion, it will dismiss the opposition instead of staying proceedings.

(4) A rare case of the stay of proceedings can result from submission of written observations by a third party pursuant to Art. 41 of the Community Trademark Regulation, if the Examining Division decides to re-examine the Community trademark's entitlement to protection on the basis of such a submission.

(5) If opposition proceedings are stayed, and are settled on the basis of a decision elsewhere, the Office will refund each opponent half of the fees paid, Rule 21(4) Implementing Regulation.

### c. Guiding Function of the Office

Considerable importance for the economic course of proceedings will be attached to the question whether the applicant will be permitted by Rule 19(1) of the Implementing Regulation to limit himself in his first reply initially to what he considers to be the most similar trademark(s) and to demand, for instance, evidence of use for these and other marks, instead of having to prepare extensive submissions on more remote trademarks. This means that if the Office has a different opinion of the relevance of a trademark, the opposition should not be granted without a further possibility of reply merely because of the expiry of the set time limit. A certain amount of flexibility on the part of the Harmonization Office can prevent disputes concerning the grant of the right to be heard pursuant to Art. 73 of the Community Trademark Regulation.

### d. Consideration of National Decisions

The delicate question - already addressed in another context - remains, namely to what extent the Office will acknowledge national court decisions on the question of the likelihood of confusion. If only for reasons of legal certainty, if it has assumed that the instance issuing the decision is competent in the topic, such decisions, although not adopted automatically, should be subject to a kind of favorable examination along the lines of the "committee principle" of Anglo-Saxon law. This will prevent questions of competence being disputed at the applicants' expense, and also prevent a court deciding a borderline case differently, only because it feels obliged to prove that it is itself juridically creative. 16

It is true that neither the Opposition Divisions nor the Appeal Boards of the Harmonization Office are bound by decisions of national courts, and vice versa. This will apply in particular if the court in question is not one that has years of experience in trademark issues. However, in the situation described above of an opposition based on a more recent national trademark than the applicant's home trademark, the aim should be to avoid the applicant losing his rights, for instance, as a result of a differing evaluation of the similarity of the goods by the national and the European instances. Likewise, the extent to which the court is willing and able to settle such a dispute in a proceeding under Art. 63 of the Community Trademark Regulation, as proposed above, is still open.

The possibility of the applicant falling victim to a gap in the law results from the fact that European law does not recognize the action for an approval of registration, as available under German law, and filed with the civil courts, 17which can be used to compel the Office to register a trademark despite a successful and final decision of the Office in favor of the

opponent. Such an action can be based on a prior trade name, on copyright and unfair competition, or tort - reasons which are not taken into consideration by the Patent Office.

## 6. Conversion in the Event of Loss of the Community Trademark

In the first few years, most oppositions will be submitted on the basis of national trademarks, some of which will be earlier rights in only one country or in a few countries. This means that if the opposition is successful, trademark protection with the priority date of the Community trademark can be achieved through conversion pursuant to Art. 108 of the Community Trademark Regulation in the other countries in which there is no earlier right. Moreover, this possibility not only applies to the case of a successful opposition but also in the event of a cancellation action, a refusal for absolute reasons, in the event of a voluntary waiver or in the event of the failure to prolong the Community trademark, but not to the case of a cancellation for non-use (Art. 108(2)(a) of the Community Trademark Regulation).

In such cases, the Office gives notice of the possibility of a conversion according to Art. 108(4) of the Community Trademark Regulation. Since, depending on the country, the conversion also involves a new national examination and payment of national application fees, the advantage of this conversion is limited to obtaining the priority right. This means that in the case of doubt it may be recommendable not to abandon the struggle for the Community trademark prematurely.

## Forecast

Without doubt, there are still a large number of unanswered questions which require clarification for the opposition proceedings alone. Many will regret that they cannot contribute to the solution of these problems in every case by a visit to the Costa Blanca, for many of these questions will be discussed and dealt with in writing. Nevertheless, in difficult cases, the Harmonization Office should not dismiss the application for the holding of oral hearings pursuant to Art. 75(1) of the Community Trademark Regulation, or refuse to convoke such hearing *ex officio*. In this context, it should be pointed out that the time limit of Rule 56(1) of the Implementing Regulation for inviting the parties for a hearing ("at least one month") must be regarded as far too short and will only be the occasion for frequent requests for postponement. The fact that hearings can be held in the absence of one of the parties concerned (Rule 56(3), Implementing Regulation) emphasizes the necessity for early consultation. Trademark law in particular is a suitable territory for solutions agreed on by settlement, which frequently can only be achieved through personal discussions with all the parties involved. It will in particular be the need to find practical solutions to the obstacles described above that will decide the success of the Community trademark in the long term.

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- 1 Council Regulation (EC) No. 40/94 dated December 20, 1993 on the Community Trademark.
- 2 Commission Regulation (EC) No. 2868/95 dated December 13, 1995 for implementing Council Regulation (EC) No. 40/94 on the Community Trademark.
- 3 Art. 42 in conjunction with Art. 8.
- 4 Rule 15(1) Implementing Regulation, Art. 2 No. 5 of the Fees Regulation.
- 5 Cf. Rule 94(7)(f).
- 6 Thus GERULAKOS in an unpublished comment on Art. 43, 3.2 a 1 of the Community Trademark Regulation.
- 7 The opposition proceedings involve a number of time limits which are mostly not extendable:  
Art. 42 Time limit for submission and payment: 3 months - not extendable  
Rule 17(1)-(3) Submission of any translations: 1 month - not extendable  
Rule 18(2) Remedying of defects found: 2 months - not extendable  
Rule 19(1) Formal opening of proceedings: 2 months - extendable  
Art. 59 Appeals: 2 months - not extendable
- The regulations concerning the Community trademark contain a number of deadlines that the applicant must be aware of in order to avoid legal disadvantages in connection with the opposition proceedings:
  - According to Rule 19(1) of the Implementing Regulation, the Office communicates the opposition to the applicant, if it affirms admissibility pursuant to Rule 18 of the Implementing Regulation.
  - This notification states that the opposition proceedings shall be deemed to commence two months after receipt of the communication and that until then the applicant may withdraw the application without cost consequences (cooling-off period). According to Rule 19(2) of the Implementing Regulation. This deadline can be extended at the joint request of the applicant and the opponent; the applicant and the opponent will use this period for discussions concerning a delimitation agreement.
  - In addition, according to Rule 19(1) of the Implementing Regulation, the Office will order the applicant to reply to the opposition within a period that naturally only commences after expiry of the two-month cooling-off period.
  - It is unclear by which date the objection of non-use must be lodged. According to the Office's view to date, this does not fall within Art. 74(2) of the Community Trademark Regulation, 8
- 8 GERULAKOS, op. cit., No. 3b 2).
- 9 Cf. PAGENBERG, "Opposition Based on Unregistered Rights and Reimbursement of Opposition Costs Under the Future Community Trademark System," 20 IIC 595 (1989).
- 10 The case of an earlier priority must of course be decided differently if the Alicante applicant holds an earlier national trademark in Germany but the opponent submits an opposition based on a more recent French trademark. In such a case, the opposition will be successful unless it can be proved that the registration in France was made in bad faith.
- 11 First Council Directive of December 21, 1988 on the Approximation of Laws of the Member States Relating to Trademarks.
- 12 EPO, BKT 0590/94 - 3.3.3 - Lenzing; EPO, 29 IIC 190 (1998) - ETA.
- 13 Federal Supreme Court decisions: 1957 GRUR 27, 28, left column - Hausbücherei; 1969 GRUR 695 - Brilliant; 1975 GRUR 437 - Bouchet; 1981 GRUR 60, 62, left column - Sitex; 1985 GRUR 72 - Consilia; 1985 GRUR 389, 390 - Grohe; 1988 GRUR 776 - PPC; 1990 GRUR 1042, 1046 - Datacolor; 1989 GRUR 449, 453 - Maritim.
- 14 Sec. 21(1) and (2): Prohibition on use; Sec. 51(1): Exclusion of a claim for cancellation of a trademark that is used.
- 15 Federal Supreme Court decision, 1981 GRUR 66 - MAN/G-man, with comment by KLAKA; on the former law, BAUMBACH & HEFERMEHL, on Sec. 24 of the Trademark Act, point 57.
- 16 Cf. the harsh criticism by BEIER in 1997 GRUR Int. 750 - Panel, on a decision by the Federal Patent Court in which it was deemed not to be necessary to discuss decisions of other countries on harmonized trademark law.
- 17 Cf. for details MUNZINGER, "Zur Eintragungsbewilligungsklage," 1995 GRUR 12.