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Intellectual Property Rights im Blog

IP|Expertennotizen: The implementation of Art. 6 and 7 (2004/48/EG) through Sec. 140c of the German Patent Act

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Die Expertennotizen von IP|Notiz sollen ein Forum für Experten im sogenannten „Grünen Bereich“ und daran angeschlossenen Rechtsgebieten bilden. Unser Ziel ist, damit den öffentlichen Austausch – auch im Medium Internet – in unseren Rechtsgebieten zu fördern und Praxis und Wissenschaft einander anzunähern. Die Transparenz des wissenschaftlichen Austausches für die Öffentlichkeit ist dabei einer der wichtigsten Effekte dieser Reihe.

1. Introduction

On September 1st 2008 section 140c of the German Patent Act (PatG) came into effect. This provision is part of a series of amendments to German IP related regulations due to the implementation of the IPR Enforcement Directive (2004/48/EG) made under the European internal market provisions. The Directive concerns measures, procedures and remedies necessary to ensure the enforcement of intellectual property³

Regarding the considerable difficulties that a rightholder may have to prove an infringement or to determine his claim to compensation in the case of a detected infringement, Sec.140c PatG in particular deals with the implementation of Art. 6 and 7, concerning „evidence“ and „measures for preserving evidence“, themselves being compliant with Art.43 (1) and Art.50 (1)(b) of TRIPS. Before the implementation of Sec.140c PatG claims regarding evidence were based on Sec.809⁴ et seq. of the German Civil Code. However those provisions were not sufficient to fulfil the requirements of Art.6 of the Directive⁵ for the reasons that the Patent Act lacks the requirement of a duty of assistance of alleged infringers or potential infringers, namely to ensure the preservation of evidence.

¹ First author the German provision seems significant amendments to the Patent Act (PatG) and the Patent "Green Book". However, due to the complexity of the German law regarding the law of patents - see 140c PatG & its text being without technical nature.

² See 140c PatG

³ IPR Enforcement Directive

⁴ See the requirements for evidence preservation under §§ 809 to 810 of the German Civil Code (BGB) which are not sufficient to ensure the preservation of evidence in the case of a detected infringement. The requirements for evidence preservation under §§ 809 to 810 of the German Civil Code (BGB) are not sufficient to ensure the preservation of evidence in the case of a detected infringement. The requirements for evidence preservation under §§ 809 to 810 of the German Civil Code (BGB) are not sufficient to ensure the preservation of evidence in the case of a detected infringement.

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