

KATJA BRZEZINSKI

Das Vorbenutzungsrecht

*Geistiges Eigentum und
Wettbewerbsrecht*
105

Mohr Siebeck

Das Vorbenutzungsrecht Legitimation Patentsystem Wettbewerbsrecht

Katja Brzezinski



Das Vorbenutzungsrecht Legitimation Patentsystem Wettbewerbsrecht:

Das Vorbenutzungsrecht Katja Brzezinski, 2015-09-04 English summary Within the legislation of technical protection rights and design the right of prior use stands in an area of conflict between self evident and foreign object With regard to patent legislation Katja Brzezinski examines if and how this ambivalence could be resolved in light of the historical development of this law legal and economic political coherencies as well as its function in the patent system German description Das Vorbenutzungsrecht ist ein integraler Bestandteil der technischen Schutzrechte und des Designrechts Es bewirkt dass die Ausschliesslichkeitswirkung des jeweiligen Schutzrechts gegenüber demjenigen nicht eintritt der die Erfindung bzw das Design bereits zur Zeit der Anmeldung im Inland in Benutzung genommen oder Veranstaltungen hierzu getroffen hat Katja Brzezinski geht der Frage nach inwieweit die Ambivalenz des Vorbenutzungsrechts zwischen Selbstverständlichkeit und Fremdkörper in der vom Ausschliesslichkeitsgedanken gepragten Patentrechtsordnung aufgelöst werden kann Hierfür untersucht sie die geschichtliche Entwicklung dieses Rechts rechts und wirtschaftspolitische Zusammenhänge sowie seine Funktion im weiteren Kontext der Patentrechtsordnung und erklärt das Vorbenutzungsrecht auf dieser Basis als legitimes Instrument des Interessenausgleichs in der Patentrechtsordnung **Deutsche**

Nationalbibliographie und Bibliographie der im Ausland erschienenen deutschsprachigen Veröffentlichungen

,2001 Voraussetzungen und Wirkungen des Vorbenutzungsrechts gegenüber jüngeren Patenten und Gebrauchsmustern Thomas Kreser, 2012-09-26 Studienarbeit aus dem Jahr 2011 im Fachbereich Jura Sonstiges Note 1 0 Hochschule Deggendorf Veranstaltung Patentrecht Sprache Deutsch Abstract Hoher Innovationsdruck sowie die Tatsache dass z B die Hersteller in einem bestimmten Marktsegment häufig mit den gleichen Problemen konfrontiert sind können dazu führen dass parallel verschiedene Parteien die gleiche oder sehr ähnliche Innovationen hervorbringen Es ist auch möglich dass ein Erfinder eine Innovation erst später für schutzwürdig ansieht und mittlerweile Dritte die Innovation ebenfalls benutzen Schließlich gibt es immer wieder den Fall dass Unternehmen bewusst auf das Beantragen von Schutzrechten verzichten um ihren Wettbewerbern keine ungenutzten Informationen über erfolgskritische Innovationen zugänglich zu machen Das kann im Extremfall dazu führen dass ein Unternehmen bei einem neu erteilten Patent einen Wettbewerber dazu zwingen könnte den Betrieb einzustellen da sein Kernprodukt das bisher ungeschützt war und mittels eines der Öffentlichkeit nicht zugänglichen Verfahrens hergestellt wurde das neue Patent verletzt Dies könnte dazu führen dass enorme Werte vernichtet werden müssten Um Benutzer von Erfindungen die zum Zeitpunkt als sie mit der Nutzung begannen noch nicht geschützt bzw patentiert waren zu schützen wird ihnen das sogenannte Vorbenutzungsrecht eingeräumt Es ist eine Einschränkung der Rechte des Schutzrechteinhabers das es dem Vorbenutzer VB erlaubt die Erfindung trotz bestehenden Schutzes durch z B ein Patent weiter zu nutzen 1 2 Ziel Aufbau der Arbeit Die Zielsetzung in der vorliegenden Arbeit ist es einen Überblick über das Vorbenutzungsrecht zu geben Dazu wurde hauptsächlich auf juristische Kommentare zurückgegriffen um die

Voraussetzungen die Wirkung und die Grenzen des Vorbenutzungsrechts gegenüber dem Patent und dem Gebrauchsmuster herauszuarbeiten Im zweiten Kapitel werden kurz die rechtlichen Grundlagen der beiden technischen Schutzrechte Patent und Gebrauchsmuster dargestellt Ebenso werden Schutzdauer Schutzwirkung betrachtet Im dritten Kapitel wird das Vorbenutzungsrecht vorgestellt und gezeigt unter welchen Voraussetzungen es in die Rechte von Patent bzw Gebrauchsmusterinhabern eingreift bzw welche Möglichkeiten es den Berechtigten den sogenannten Vorbenutzern bietet Abschließend werden die Kernaussagen der Arbeit zusammengefasst Immaterialgüterrecht Alois Troller, 1983

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