

VI. Conclusion

Expert opinions based on empirical legal research in different population groups have gained great importance for jurisprudence, not only in the German legal system. By measuring factual circumstances and by taking these empirical research results into due consideration in the decision-making process, there is a significantly improved basis for judgment. This does not only apply to surveys regarding trade acceptance/secondary meaning within the context of the registration or cancellation of trademarks or to those being the basis for the determination of the risk of confusion, but also to expert opinions dealing with the misleading of the public. This enables judges to base their decisions on representative data and on legally relevant facts instead of the normative way of making assumptions about the possible opinion of the public.

Opinions

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Harmonisation of International Patent Law? – A Reply to Straus and Klunker**

In 38 IIC 907 (2007), Joseph Straus and Nina-Sophie Klunker published an article on “Harmonisation of International Patent Law” that, apart from describing the various initiatives of world-wide patent harmonisation between 1991 and to date, also makes suggestions on the desirable level and direction of such harmonisation efforts. This author has some reservations.

1. The first issue relates to the notion of Straus and Klunker that *harmonisation* is a desideratum as such (at 936). This, at least in the context of patent law, is questionable. For one thing, harmonisation is often a battle over existing standards. Such a goal, however, remains doubtful where the world’s major patent systems in their current form have been called into question.¹

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** The following text represents the private opinion of the author.

1 For the US, see JAFFE & LERNER, “Innovation and its Discontents” (Princeton 2004). The text currently before the US Senate (as of 7 September 2007) is available at <http://www.jonesday.com/patentlawreformupdates/>; comment on these developments in Patent World, November 2007, at 22; for Europe, apart from the ongoing discussions on a Community patent, see the suggestions of A. BRIMELOW for the EPO in: “Managing Intellectual Property”, July/August 2007, at 44. On a more general level, doubts about the appropriateness of the current system have also been voiced in the EPO-commissioned project

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