Preface

In all industrial nations, patents play an important role in the system of industrial property rights. They stimulate and reward innovations, and also result in the successful development of new products and processes. According to the internationally applicable principle of the territoriality of patent law, patents only have a substantial effect within the territory of the state for which they have been granted and do not have any effect abroad. Therefore, today more than ever before, those practising in the field of international patent law need to be familiar with the substantive patent law of other countries: The choice of the international forum that is most favourable for the proprietor of parallel patents depends to a large degree on the risks and opportunities which may arise from the law of the respective foreign forum. National courts sometimes have to decide claims for infringement of foreign patents; which means that courts and judges are required to apply foreign substantive patent law, or that they must at least be able to assess the information given by experts in the foreign law who have been called in to assist them. When assessing open questions of patent law with an international dimension, national courts often look to the legal situation and judicature of other states. Scholars have always considered comparative studies of law to be most instructive and this applies all the more to patent law on an international level, as is evidenced by numerous studies and publications.

The object of this book is to give an overview of the core aspects of substantive patent law in the most important industrial nations of the world so that they can be compared with one another. To this end, it was necessary to place a limit on the number of subjects covered. The first part deals with the core issue of the interpretation of patent claims. A discussion of the principles of interpretation and the determination of scope which also takes into account the doctrine of equivalence is followed by frequently asked questions concerning the content of and the relationship between various types of competing claims. The second part deals with contributory patent infringement, which is an important institution in an economy which is based on the division of labour. This part includes a discussion of the prerequisites for a claim in terms of this perpetrator-oriented institution, particular features of cross-border cases and the limits of this institution in terms of patent law, as well as the legal consequences of a contributory patent infringement. The third part relates to damages in the case of patent infringements, which are important with respect to economic compensation and deterrence. Particular emphasis is placed here on the different methods of calculating damages and the evidentiary requirements.

In order to facilitate a comparison, the editors have developed a catalogue of questions which serves as a structure for the respective national sections. Due to systematic differences between the patent laws in individual countries, it was not always possible to adhere strictly to this structure. Nevertheless, the editors hope

that they have made a due contribution towards an improved overview of substantive patent law on an international scale.

The authors of this work are recognised experts in the field of international patent law and are active in the legal profession, industry and science.

This work reflects the law as at June 2009.

In view of the complexity of the subject matter discussed in this book, the editors would welcome any comments, criticism or suggestions made by readers.

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