



Federal Ministry  
of Justice



German Patent  
and Trade Mark Office



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## MASTER CLASS

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**WIPO/IP/JU/MUC/23/1**  
**ORIGINAL: ENGLISH**  
**DATE: MAY 17, 2023**

## Master Class on Intellectual Property Adjudication

### – Judicial Perspectives

organized by  
the World Intellectual Property Organization (WIPO)

and  
the Federal Ministry of Justice of Germany (BMJ)

with the support of  
the Federal Court of Justice of Germany (BGH)

the German Patent and Trade Mark Office (DPMA)

and  
the Federal Patent Court of Germany (BPatG)

**Munich, May 31 to June 2, 2023**

### PROGRAM

*prepared by the International Bureau of WIPO*

Wednesday May 31, 2023

9.00 – 9.15      **Welcome and Opening Addresses**

Eva Schewior, President, German Patent and Trade Mark Office (DPMA)

Klaus Bacher, Presiding Judge, 10th Civil Senate, Federal Court of Justice of Germany

Gerald Rothe, Vice-President, Federal Patent Court of Germany

Eun-Joo Min, Director, WIPO Judicial Institute, IP and Innovation Ecosystems Sector, World Intellectual Property Organization (WIPO)

9.15 – 9.30      **Introduction of Participants**

9.30 – 10.10    **Session 1. Judicial Dialogue Across National and Regional Systems**

- Engagement with foreign approaches and experiences as exchange
- Building a global network of IP judges

Klaus Bacher, Presiding Judge, 10<sup>th</sup> Civil Senate, Federal Court of Justice of Germany

Annabelle Bennett, Former Judge, Federal Court of Australia

Prathiba M. Singh, Justice, High Court of Delhi, India

10.10 – 10.30    **Session 2. *An International Guide to Patent Case Management for Judges and WIPO's Work with Judiciaries***

- Specialized patent judiciary
- Relationship between administrative proceedings in IP offices and judicial proceedings
- Relationship between validity and infringement proceedings (unified vs bifurcated systems)

Eun-Joo Min, Director, WIPO Judicial Institute

10.30 – 10.50    **Coffee Break**

10.50 – 12.30    **Session 3. Patentability**

- Patent eligibility
- Novelty
- Inventive step (standard of inventive step, e.g., “scintilla” vs a “quantum leap”)
- Types of patents (invention patents, utility models, design patents, etc)

*Overview (30 minutes)*

Jimmie V. Reyna, Circuit Judge, Court of Appeals for the Federal Circuit, United States of America

Gerald Rothe, Vice-President, Federal Patent Court of Germany

*Break-out discussion in groups (50 minutes)*

*Reporting and summarizing analysis (20 minutes)*

12.30 – 14.00 **Lunch Break**

14.00 – 15.30 **Session 4. Infringement**

- Claim construction
- Scope of claims and support in the specification
- Doctrine of equivalents
- Infringement analysis
- Defenses

*Overview (20 minutes)*

Rian Kalden, Presiding Judge, Second Panel of the Court of Appeal, Unified Patent Court; Senior Judge, Court of Appeal, The Hague, Netherlands

Prathiba M. Singh, Justice, High Court of Delhi, India

*Break-out discussion in groups (50 minutes)*

*Reporting and summarizing analysis (20 minutes)*

15.30 – 16.00 **Coffee Break**

16.00 – 17.00 **Session 5. Pharmaceutical Patents**

- Sufficiency and Plausibility
- Infringement of second medical use patents

*Overview (30 minutes)*

Ingo Beckedorf, Chair of the Legal Board of Appeal and Deputy of the President of the Boards of Appeal of the European Patent Office

Rian Kalden, Presiding Judge, Second Panel of the Court of Appeal, Unified Patent Court; Senior Judge, Court of Appeal, The Hague, Netherlands

*Discussion (30 minutes)*

18.00 **Evening reception hosted by the Federal Ministry of Justice of Germany**

Thursday June 1, 2023

9.00 – 10.30 **Session 6. Patent Case Management (Part 1)**

- Early case management
- Discovery and other ways of gathering of information
- Evidence and role of experts

*Overview (15 minutes)*

Annabelle Bennett, Former Judge, Federal Court of Australia

*Break-out discussion in groups (50 minutes)*

*Reporting and summarizing analysis (25 minutes)*

- 10.30 – 10.45 **Coffee break**
- 10.45 – 12.00 **Session 7. Patent Case Management (Part 2)**
- Confidentiality
  - Summary proceedings
- Overview (15 minutes)*
- Prathiba M. Singh, Justice, High Court of Delhi, India
- Break-out discussion in groups (40 minutes)*
- Reporting and summarizing analysis (20 minutes)*
- 12.00 – 13.30 **Lunch Break**
- 13.30 – 14.15 **Session 8. Provisional Measures**
- *Ex parte* proceedings and the right to be heard
  - Degree of certainty that the patent is valid and infringed
  - Urgency
- Overview (20 minutes)*
- Jimmie V. Reyna, Circuit Judge, Court of Appeals for the Federal Circuit, United States of America
- Discussion (25 minutes)*
- 14.15 – 15.00 **Session 9. Remedies**
- Approaches to injunctive relief (injunctive relief as a rule or as an exception)
  - Assessment of damages
  - Other remedies
  - Costs (fee shifting)
- Overview (20 minutes)*
- Klaus Bacher, Presiding Judge, 10<sup>th</sup> Civil Senate, Federal Court of Justice of Germany
- Discussion (25 minutes)*
- 15.00 – 17.30 **Visit to the Federal Patent Court of Germany**
- Departure from DPMA to the Federal Patent Court (BPatG) (60 minutes)*
- Visit and presentation of the BPatG (90 minutes)*
- 17.30 – 22.00 **Dinner at BMW Welt Restaurant Bavarie by Kaefer, hosted by the German Patent and Trade Mark Office (DPMA)**
- Departure to restaurant (60 minutes)*
- Dinner*
- 22.00 **Departure to the hotel**

Friday June 2, 2023

9.00 – 10.45      **Session 10. Standard Essential Patents (SEPs)**

- Is the FRAND commitment of a SEP holder a matter of contract and/or competition law?
- How to assess the willingness of the SEP owner to grant a FRAND license (no hold up) and the willingness of the SEP implementer to take a FRAND license (no hold out)? How do these assessments affect the remedies available?
- How much discretion does a judge have to set a FRAND rate in view of the parties' offers?
- Can a court-determined FRAND rate govern a global SEP portfolio? Which court has jurisdiction to decide on a global FRAND rate, and what are the limitations to that?

*Overview (45 minutes)*

Klaus Grabinski, President, Court of Appeal, Unified Patent Court

Andras Jokuti, Director, Patent and Technology Law Division, Patents and Technology Sector, WIPO

*Discussion (45 minutes)*

10.45 – 11.00      **Coffee Break**

11.00 – 11.45      **Session 11. Unified Patent Court**

Klaus Grabinski, President, Court of Appeal, Unified Patent Court

11.45 – 12.45      **Session 12. Judicial Role in Confronting the Increasing Interface of IP with Other Public interests**

- Interaction between IP rights and competition law
- Interaction with other public considerations (access to medicine v. incentive for innovation)

*Panel discussion*

All Faculty Members

12.45                **Closing**

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