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Report Q187

in the name of the Hungarian Group
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Limitations on exclusive IP Rights by competition law

Questions

I) STATE OF THE SUBSTANTIVE LAW

1) The Groups are requested to indicate if the law of their country knows rules governing in general the relationship between the rules of competition and the intellectual property rights.

There is no unified act which would extend to both intellectual property and competition law.

There is also no unified act on intellectual property as the different kinds of intellectual property rights (patents, copyright, designs, models and trademarks) are regulated in separate acts.

On the contrary, a unified act regulates unfair competition and antitrust (cartels, abuse of a dominant position, merger control) law.

The joint application of the above–mentioned two branches of law is a matter of legal practice.

2) The Groups are invited to indicate if previous to the adoption of the TRIPS, the legislation of their country knew the exceptions in particular founded on article A.4 of the Paris Union Convention, to the exclusive rights of patents, designs and models or copyright.

The Groups must also describe the conditions and the effects of these exceptions.

Finally, do the Groups have to indicate the justification of these exceptions and in particular if these exceptions were justified by requirements of the freedom of competition?

Before the adoption of the TRIPS, Sections 21 to 23 of the Act II of 1969 on the protection of inventions by patents (hereinafter referred to as RSzt.), which was in effect until January 1, 1996, contained rules on compulsory licences

a) due to failure to utilize an invention,
b) due to dependence of patents

based on the Paris Union Convention.

The act contained the following conditions concerning the above–mentioned:

a) If the patentee has not utilized the invention within the territory of the country in the interest of satisfying domestic demand in four years calculated from the day of the application for patent or – if it is a longer period – within three years from the day the invention was patented, or the patentee has made no considerable preparations for

utilization and has not granted licence for utilization to others, a compulsory licence shall be granted – at its own request – to a domestic company, unless the patentee justifies the default. (Section 21 of Rszt.)

b) 1) If the patented invention cannot be utilized without infringing another patent (hereinafter: impeding patent), the holder of the pending patent shall be granted a compulsory licence upon its request, to the extent necessary, for the utilization of the impeding patent, provided that in comparison to the invention under the impeding patent, the invention of the dependent patent means a technical progress of considerable economic significance.

2) The holder of the impeding patent – if a compulsory licence is granted for his patent – may claim – in accordance with the common rules applicable to compulsory licences – that he shall be granted a licence for the utilization of the invention under the pending patent, on equitable terms. (Section 22 of RSzt.)

The extent, scope and time period of the compulsory license shall be established by the court. A compulsory license may be granted with or without restrictions. The compulsory licence shall not be exclusive.

The patentee shall be entitled to an appropriate fee for the compulsory licence. Failing an agreement, the fee shall be determined by the court. The fee shall reflect the economic value of the compulsory licence, and, in particular, it has to be proportionate to the fee, that the compulsory licencee would have had to pay on the basis of a utilization contract, concluded with the patentee having regard to the licencing practice developed in the technical field of the subject–matter of the invention.

If the compulsory licencee fails to commence the utilization of the invention within one year, reckoned from the final and legally binding granting of the licence, the patentee may request the amendment or withdrawal of the compulsory licence.

The patentee may also request the amendment or withdrawal of a compulsory licence, if the circumstances serving as a basis for licencing have ceased to exist, and are not expected to occur again. Such amendment or withdrawal shall be so ordered, as not to infringe the legal interests of the compulsory licencee. (Section 23 of Rszt.)

The compulsory licence is an exceptional institution in the regulation of rights originating from the given intellectual property. Patent law establishes those cases in which compulsory licence may be granted to third persons pursuant to specific terms and guarantees. If the legal requirements of granting a compulsory licence are met, then granting the compulsory licence is independent of the market behaviour of the patentee or the given market situation. Thus, compulsory licence is a limitation of the extent of a patent right on the basis of patent law. So, patent law itself ascertains the possibilities of the patentee. Based on the above, compulsory licence is independent of competition law.

Copyright rules (Act III of 1969, before its amendment in accordance with the TRIPS Agreement and subsequently until September 1, 1999) established the concept of free use (Section 16) and enumerated the individual cases of free use (Sections 17 to 21).

According to the general concept of free use, within the scope of free use, utilization is free of charge, and the consent of the author is not required therefor.

The cases of free use were the followings:

– the right of citation (Section 17 subsection 1);
– the right of taking over for educational purposes (Section 17 subsection 2). The use of a published work in a different work, which exceeded citation, constituted taking over;

– the right to make private copies (Section 18 subsection 1). Private purpose was established if making copies did not serve either the purpose of marketing or that of income–earning, and it did not otherwise infringe the lawful interests of the author. This rule did not apply to architectural works and technological projects;

– the right to lending–for–use of copies of the work (Section 18 subsection 2) – with the exception of computer programmes, motion pictures and other audio–visual works, as well as works contained in sound recordings. These works qualified as free use only in public libraries, which operated as budgetary institutions;

– communications containing materials of facts and news could be freely taken over, with the indication of the sources. The contents of open court hearings and speeches could also be freely used (Section 19 subsection 1);

– a daily, a periodical, the radio and the television could take over topical economic and political articles freely, by naming the source as well as the author indicated (Section 19 subsection 2);

– the television could freely use any work of fine art, architecture, or arts and crafts, as well as photographs, occasionally or as scenery in newsreels, as well as in the topical programmes of the radio and the television (Section 20 subsection 1);

– publicly exhibited works of fine arts, architecture, arts and crafts and photography could be presented by dailies and periodicals, as well as by newsreels and other topical programmes of the television (Section 20 subsection 2);

– the work could be played or performed for private use, in school celebrations and for other school purposes, in private parties held occasionally as well as on the occasion of mass events (gala procession, etc.), if that did not serve the purpose of income–earning or the enhancing of income even indirectly, and the participants did not receive any remuneration either (Section 21). The rule defined the concepts of the purpose of enhancing income and private meeting.

Neither compulsory licence, nor any further rules limiting the intellectual property rights are motivated by competition law. These limitations are of self–restrictive nature and ascertain the borders of exercising certain exclusive rights irrespective of competition law aspects, in order to confine the possibility of abusing the rights, which indirectly also serves free competition. These exceptions are listed exhaustively by the acts.

3) *The Groups are invited to indicate if articles 13, 30 and 31 of the treaty TRIPS gave place to the establishment of legal rules defining the exceptions being able to be brought to exclusive rights of copyright, patent, designs.*

The Groups should in this case indicate the conditions for application of these exceptions and their consequences.

And the Groups should indicate the justification of these exceptions and in particular if these exceptions were justified by requirements of the freedom of competition.

The amendment in patent law pursuant to articles 30 and 31 of the treaty TRIPS contain modifications concerning compulsory patent licence as follows:

– according to the new regulation, compulsory licence may be granted only if exploitation is predominantly aimed at satisfying domestic supply, the previous regulation did not contain such a limitation;

– according to the previous regulation, the patentee could request the amendment or withdrawal of the compulsory licence if the compulsory licencee failed to utilize the invention within one year reckoned from the final and binding decision granting the compulsory licence. According to the new regulation, the patentee may request the

amendment or withdrawal of the compulsory licence if the compulsory licencee failed to commence the utilization of the invention within one year reckoned from the final and binding decision granting the licence;

– article 13 of the TRIPS Agreement and article 9 (2) of the Berne Union Convention is reflected in the general provision of the present Copyright Act LXXVI of 1999 (Section 33 subsection 2) concerning free use, according to which use is allowed and can be done without remuneration even on the basis of the provisions pertaining to free use only to the extent that it is not injurious to the regular use of the works and it does not damage the author's legitimate interests without justification, and furthermore, use is allowed and can occur without remuneration if it fulfills the requirements of decency and its goal is not inconsistent with the purpose of free use. Furthermore, the provisions pertaining to free use cannot be interpreted extensively.

– Hungarian copyright regulation is particular as it not only adjusts the individual cases of free use to the requirements of TRIPS (and BUC), but it also incorporates the obligation, which arises from the international agreement and is only binding on the state, into the national law as a general limit of all cases of free use. Consequently the free use, which is otherwise allowed, shall not be exercised, if it does not comply with the above cited "three step test".

Furthermore, the Copyright Act of 1999 has been amended for certain cases of free use, which were later also approximated to Directive 2001/29/EC (Infosoc Directive), by the Act CII of 2003.

Based on the above, a rather complicated system of free use was established.

In some cases the licence without remuneration continues to apply (e.g. citation). In other cases, which were introduced or amended with respect to the Infosoc Directive, where the right owner may exclude or limit free use with his or her declaration (e.g. the temporary recordings made by radio or television organizations pursuant to Section 35 subsection 7 first sentence), the new rules allow an individual exception in favour of the exclusive right owner. Finally, in a third case, some beneficiaries of free use have a right against the exclusive right owner to ensure the work necessary for free use or to the exercise of free use. This right can be enforced by mediation (before an Arbitration Board) or before courts. It should also be mentioned that if free use concerns reproduction and if reproduction is made by a reprographic device or if the copy for private purposes or the institutional copy is made to a media subject to the "blank cassette" fee, then the benefit of free use is only an indirect legal licence, since not the user, but a third person is obliged to pay fee for the free use.

The individual cases of free use are the followings:

– the right of citation (Section 34 subsection 1)

– the right of taking over (Section 34 subsection 2). Parts of literary or musical works that have been made public and small independent works of such nature can be used for illustration for teaching in educational institutions and for the purpose of scientific research by designating the source and the author specified therein and to the extent justified. There is a new condition of taking over, according to which the recipient work shall not be utilized commercially.

– Making copies for private purposes (Section 35 subsections 1–3) constitutes free use if such activity does not serve to generate or increase income in any way or form. Having another person make copies of works by computer or on electronic data media is not considered free use. There are further exceptions from free use of natural persons concerning different kinds of works. Copies of architectural works, technical structures, software, computer–operated data banks, public performances of works and sheet music

by reproduction shall only be made, with the exception of purposes of scientific research, with the authorisation of the right owner. Complete books and periodicals or dailies may be copied only by hand or typewriter, even for private purposes.

– Certain public institutions are also entitled to free use regulated separately (Section 35 subsections 4 to 5).

  Publicly accessible libraries, educational establishments, museums, archives (collectively referred to as LAMS) are entitled to this right for exclusively the following purposes:

  – academic or scientific research or
  – making from one's own copy as archiving for academic or scientific purposes or
  – for supplying a public library or
  – national digital archive / setting up and operating a national digital archive.

  Even if the above purposes are met, copies of the works may only be made in the manner and to the degree appropriate to the purpose, if such activity does not serve to generate or increase income in any way or form. Parts of works that have been published as books and newspaper and periodical sections can be reproduced by the above mentioned institutions for internal purposes even if the above purposes are not met. The special internal purpose is school education. In this case such a number of copies can be made by any method or device that corresponds to the number of students in the class or for high school, college, or university examinations.

– Temporary reproduction (Section 35 subsection 6).

  Temporary reproductions of works are made at internet providers (at their server) and computers of the members of the public. These temporary (auxiliary or interim) reproductions of a work are inevitable, therefore they are considered as free use under the following conditions. Reproduction is free if it is

  – an inalienable part of a technical process designed for such use and
  – has no economic significance of its own and
  – the sole purpose is to permit transmission between others over the network of a service provider or use of the work with the rightholder's consent or under the provisions of the copyright act.

– Radio or television organisations are entitled to free temporary recordings (Section 35 subsection 7). Free use constitutes temporary recordings made by radio or television organizations of works that may be legally used for the broadcast of their own programming. Unless otherwise provided for in the contract granting broadcasting rights, the recording must be destroyed or erased within three months from the date it was made. However, of these recordings, the ones – specified in the act on National Audiovisual Archive – with extraordinary documentary value may be kept in public archives of pictures and sound recordings for any length of time.

– Lending by public libraries:

  Lending made by publicly accessible libraries of copies of works bought in commerce or obtained through lending of library constitutes free use with the exception of software and computer–operated databases (Sections 39 and 40).

– The free uses concerning the press are more or less identical to those written under point 2. (Sections 36 and 37)

– There are several exceptions from the right of public performance (Section 38). A work that has already been made public may be freely performed

– for educational purposes and at school celebrations (except for school balls)
– within the framework of social care and care for the elderly
– at celebrations held on national holidays
– at the religious ceremonies of churches and at church festivities
– for private use and at occasional private events exclusively for members, employees, officers

if the performance is not intended to generate or increase income even indirectly and the participants do not receive remuneration.

– In the absence of an agreement for use to the contrary, works from the collections of publicly accessible libraries, educational establishments, museums, public archives of documents (LAMS) may be displayed on the screens of computer terminals installed and operated in such institutions for members of the general public for scientific research or for learning and may be freely communicated for such purpose to the said members of the general public in the manner and under the conditions stipulated in specific other legislation, including when they are made accessible to the general public, on condition that such use does not serve to generate or increase income in any way or form (the exception was introduced by the new Infosoc Directive).
– The non–commercial use of works falls within the scope of free use if it is done exclusively to fulfill the needs of handicapped or disabled persons as directly related to their particular handicap and only to the extent that suits such purpose (Section 41 subsection 1).
– Works can be used in court, administrative, and other official proceedings for the purpose of giving evidence in a manner and to the degree appropriate for the purpose (Section 41 subsection 2).
– In case of applying effective technical measures, the person to whom free use has been granted may demand that the rightholder provides free use by allowing an exception from the technical measures installed for protection (Sections 95/A and 105/A). The above right may be enforced before the courts or via alternative dispute resolution before the Arbitration Board.

4) The Groups are invited to indicate if such limitations apply as regards to trademarks and which are the conditions, the consequences and the possible justification.

Article 21 TRIPS excludes the granting of a compulsory licence for trademarks.

In order to prevent that the exclusive trademark rights exclude the competitors from using the sign necessary for their economic activity and competitive position, the Trademark Act of 1997 establishes the limitations on trademark protection as follows:

On the basis of trademark protection, the owner of a trademark may not prevent a third party from using the following in its business activities, in accordance with honest business practices:

– his own name or address;
– indications of the type, quality, quantity, intended purpose, value, geographical origin, time of production or fulfilment, or any other characteristic of the goods or service;
– the trademark, to the extent that such use is required to indicate the intended purpose of the goods or service, in particular in the case of accessories or spare parts (Section 15 of Act XI of 1997).

The freedom of competition is served also by the following provisions of the Trademark Act:

– termination of trademark protection due to loss of distinctive character,

– termination of trademark protection due to lack of use of the trademark,

– the possibility to indicate the trademark of the competitor in a comparative advertisement.

5) *The Groups are invited to inform if the existence of intellectual property rights constitutes a justification to some practise regarded in general as anti–competing, such as the refusal to sell or others?*

Our answer was formed with respect to the fact that the question is explicitly related to the existence of intellectual property rights. The circumstance that someone has an exclusive right is in itself irrelevant from a competition law point of view, just as the existence of any other property rights. It shall also be taken into account that besides property rights, strong moral rights are also connected to works protected by copyright, the existence of which can absolutely not be analysed from a competition law point of view. Competition law aspects may only arise if the right owner exercises its rights in an abusive manner and not in accordance with the purpose and function of the exclusive right.

The question concerning the refusal to assign or licence the right is connected with the exercise of the right and not its existence. (In Hungarian law, the exercise of rights by collective rights management societies is regulated by several limits, which have competition law character, e.g. the approval of the fees, its control by the court and the competition authority, administrative supervision. The motivation of these legal institutions is to prevent the abuse of a legal dominant position.)

6) *The Groups are invited to indicate if some of the attributes of the intellectual property rights, such as the duration of these rights, are considered in their country as raising problems from the point of view of the exercise of the freedom of competition.*

The duration of intellectual property rights in themselves do not invoke questions in connection with the freedom of competition. In copyright law, the revival of the term of protection (Section 108), which resulted from the approximation to the requirements of the European Directive, could have caused a problem. However, the Copyright Act itself qualified the use between the expiry and revival of the term of protection as free use, which could be exercised without paying remuneration for one more year from the revival of the right.

The problem may arise in connection with trademarks too, as the trademark protection can be renewed by the owner at its own discretion.

According to our view, the Trademark Act itself ensures that the trademark owner cannot exercise this possibility in an abusive manner. This conduct would be contrary to competition, if the trademark owner could unduly block third parties, competitors from using particular designations. Although on the basis of continous renewal of the trademark the protection can be prolonged for an unlimited period of time, it can be cancelled if the trademark looses its distinctive character, or if the owner fails to use it.

7) *The Groups are finally invited to formulate any other observation concerning the relationship which may exist in the substantive law of their country between the exclusive rights of the intellectual property and the rules relating to the respect of the freedom of competition.*

In order to ensure that the right owner may use the exclusive right pertaining to the intellectual property only in accordance with its purpose, the intellectual property laws impose self limits any thereby ensure that the existence of the given intellectual property and competition do not have contradictory effects. The comprehensive and universal character of the self limits are verified by, among others, the detailed rules of free use in copyright law, which take into account the interests of both the author and the person entitled to free use (point 3).

Apart from compulsory licence, each intellectual property law, within the scope of defining the content of protection, confines the exclusive right to use.

a) The exclusive right of utilization of a patent shall not cover

   – acts performed for the purpose of private use, and/or being outside the sphere of economic activities,

   – experimental procedures in connection with the subject–matter of the invention, including experiments and research necessary for the licencing of the distribution of a product;

   – the occasional preparation of a pharmaceutical – ordered by the doctor – in a pharmacy, on the basis of prescription, and further acts in connection with the pharmaceutical thus prepared (Section 19 subsection 6 of Act XXXIII of 1995).

b) The Act on Designs states that the owner of the design shall have the exclusive right to exploit the design, however this exclusive right is limited as the owner of the design may not prohibit third parties from

   – acts done privately or for non–commercial purposes;

   – acts done for experimental purposes, including the experiments and analysis, which are necessary for authorizing the distribution of the products constituting the subject matter of the design;

   – acts for the purposes of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source;

   – acts of utilization of the design of a spare part to the extent necessary for repair and for the purposes of repairing aimed at the restoration of the original outlook of a compound product, provided that such acts are compatible with fair trade practice and that the design necessarily interlocks with the original outlook of the compound product (Section 17 of the Act XLVIII of 2001)

c) Copyright law establishes the following limits of the exercise of copyrights

   – the concept of use and a non–exhaustive list that does not qualify the perception of works as an act protected by the exclusive right, with the exception of perception that also requires the reproduction of a software,

   – the exhaustion of the distribution right with respect to the territory of the European Economic Area,

   – the cases of free use (point 3)

   – the simplified rules concerning the access to parallel and volume–used works and performances (fees, compulsory licence, collective rights management).

   Furthermore, other rules of copyright law also ensure that exclusive right granted to the authors does not lead to the violation of competition law. Thus, the Copyright Act

   – ensures the acquisition of information necessary for the common operation of a software with another software,

   – defines the rights protecting the rightful users of the data of databases and the specific free use of databases.

II) PROPOSALS FOR THE FUTURE

1) *The Groups are invited to indicate if any modifications of the exclusive rights of patent rights are desirable in aim to reinforce the freedom of competition.*

On which attributes of the exclusive rights of intellectual property these modifications should carry (duration, exclusiveness, specific evidence etc...)?

How then it would be advisable to preserve the monopoly resulting from the exclusive rights of intellectual property?

The question concerns the proposals for the future.

According to our view, the findings of AIPPI Q37 concerning the same question are still correct and may serve as a basis for further analysis. The Berlin Congress of 1963 established that the normal exercise of industrial property rights is legitimate and must not be hampered by regulations designed to ensure freedom of competition.

The resolution at the 29th Congress held in 1975 in San Francisco established that industrial property rights and rules governing the freedom of competition are not in conflict but on the contrary jointly serve economic progress and public interest. These findings are correct nowadays too, and those limitations in the field of the regulation of intellectual property that have been established since then satisfy the requirements of the freedom of competition.

The limitations referred to above define the limits of the content of rights arising from intellectual property rights and thereby they also serve the purposes of the freedom of competition. Further limitations would deprive these rights of their substance and would lead to their erosion.

Concerning the question on how the monopoly position arising from the exclusive intellectual property rights may be defended under the given economic circumstances, we refer to the discussion of the working guidelines, which draws the attention to a new phenomenon such as the considerable increase in the number of delivered patents or registered trademarks. According to our view, this phenomenon in itself does not endanger the structure of the rights and their existence. This disturbing phenomenon may be eliminated by the industrial property offices of the various countries by setting higher requirements for the granting of these rights. We uphold this standpoint also for the patent protection of inventions achieved by computers. Thereby the strength of these rights would come from their inner content, which would promote the incentive element pertaining thereto and would also foster economic development.

We have to distinguish the possible abuse of these rights, the use of the rights not in accordance with their functions. Such exercise of the rights may endanger the freedom of competition, but this is not in connection with the characteristics of the rights, as all existing rights carry the inherent danger that they are exercised in an abusive manner. The present regulation correctly establishes the limits of patent, copyright and design rights. We consider that further limitations are not justified in the present economic context.

The rules defining the existence of intellectual property and the limitations on their use prevent the abusive exercise, thus their abusive exercise that could violate competition law may only occur in exceptional cases under special conditions.

Competition law itself follows the principle of abuse, thus not the dominant position itself is prohibited, only the abuse thereof. The method of the regulation is to provide a non–exhaustive list of typical cases of the abuse of dominant position.

2) *The Groups are also invited to wonder about the possible application of the concept of compulsory licence, licence ex–officio or improvement licence as regards patents, copyright, designs and models or the trademarks.*

No additional comments.

3) *The Groups are requested to also formulate any other suggestion concerning the Question.*

No additional comments or suggestions.

Summary

The existence of exclusive intellectual property rights provided by copyright and industrial property laws do not endanger the freedom of competition, they rather inspire it.

The limitations set forth in each intellectual property law (i.e., compulsory licence, free use) define the scope of rights arising from intellectual property rights and thereby they serve the purposes of the freedom of competition. Further limitations would deprive these rights of their substance and would lead to their erosion.

We have to distinguish the existence of these rights and the possible abuse of such rights. In competition law, the dominant position in itself is not prohibited, only the abuse thereof. Such exercise of the rights may endanger the freedom of competition, but this is not in connection with the characteristics of the rights, as all existing rights carry the inherent danger that they are exercised in an abusive manner. The present regulation correctly establishes the limits of patent, copyright and design rights. We consider that further limitations are not justified in the present economic circumstances.

The rules defining the existence of intellectual property and the limitations on their use prevent the abusive exercise, thus their abusive exercise that could violate competition law may only occur in exceptional cases under special conditions.

Résumé

L'existence des droits exclusifs de propriété intellectuelle, assurés par des droits d'auteur et des droits de propriété industrielle ne met pas la liberté de concurrence en danger; bien au contraire, elle la stimule.

Les limitations définies par chaque droit de propriété intellectuelle (par exemple la licence obligatoire, l'utilisation libre) déterminent la sphère des droits résultant des droits de propriété intellectuelle, et par ce phénomène, elles servent le but de la liberté de la concurrence. Plus de limitation priverait ces droits de leur substance et résulterait dans l'érosion de ces droits.

Il faut distinguer entre l'existence de ces droits et l'exercice abusif de ces droits. Dans le cadre du droit de concurrence ce n'est pas la position dominante qui est interdite, seulement l'abus d'une telle position. Un exercice abusif de ces droits peut mettre la liberté de la concurrence en danger, mais cela n'a pas de rapport avec les caractéristiques du droit, car tous les droits existants portent en eux le danger inhérent de l'exercice abusif. La régulation actuelle détermine correctement les limites des droits de brevet, des droits d'auteur et des déssins. Nous considérons que des limitations futures ne sont pas justifiées dans les circonstances économiques actuelles.

Les règles définissant l'existence de la propriété intellectuelle et les limitations de leur utilisation empêchent l'exercice abusif, donc, leur exercice abusif violant le droit de concurrence ne peut se produire que dans des cas exceptionnels, sujet des conditions spéciales.

Zusammenfassung

Die blosse Existenz von absoluten Rechten, die die geistigen Eigentumsrechte (Urheberrechte, gewerbliches Eigentum) gewähren, gefährdet die Wettbewerbsfreiheit nicht, im Gegenteil, sie fördert diese sogar.

Die in jedem Gesetz über geistiges Eigentum festgelegten Beschränkungen (d.h. Zwangslizenz, freie Benutzung) bestimmen die Reichweite von Rechten, welche aus den geistigen Eigentumsrechten stammen, und dienen somit den Zielsetzungen der Wettbewerbsfreiheit. Weitere Beschränkungen würden diesen Rechten die Substanz nehmen und zu deren Aushöhlung führen.

Wir müssen zwischen der Existenz dieser Rechte und deren Missbrauch unterscheiden. Im Wettbewerbsrecht ist nicht die marktbeherrschende Stellung verboten, sondern nur deren Missbrauch. Eine missbräuchliche Rechtsausübung könnte die Wettbewerbsfreiheit gefährden, was jedoch nicht im Zusammenhang mit dem Inhalt dieser Rechte steht, denn alle Rechte beinhalten in sich die inhärente Gefahr eines Rechtsmissbrauches. Die gegenwärtige Regelung bestimmt ausführlich die Grenzen von Patent– und Urheberrecht, sowie Mustern und Modellen. Wir sind der Meinung, dass weitere Begrenzungen unter den gegenwärtigen wirtschaftlichen Umständen nicht gerechtfertigt sind.

Die Regelungen, welche die Existenz des geistigen Eigentums und die Begrenzung seiner Ausübung festlegen, verhindern deren missbräuchliche Ausübung. Die missbräuchliche Ausübung, welche das Wettbewerbsrecht verletzen könnte, könnte nur in Ausnahmefällen unter bestimmten Bedingungen auftreten.