Intellectual property (IP) law operates with the ontological assumption that immaterial goods such as works, inventions, and designs exist, and that these abstract types can be owned like a piece of land. Alexander Peukert provides a comprehensive critique of this paradigm, showing that the abstract IP object is a speech-based construct, which first crystallised in the eighteenth century. He highlights the theoretical flaws of metaphysical object ontology and introduces John Searle’s social ontology as a more plausible approach to the subject matter of IP. On this basis, he proposes an IP theory under which IP rights provide their holders with an exclusive privilege to use reproducible ‘Master Artefacts.’ Such a legal-realist IP theory, Peukert argues, is both descriptively and prescriptively superior to the prevailing paradigm of the abstract IP object. This work was originally published in German and was translated by Gill Mertens.

Alexander Peukert is Professor of civil law, intellectual property, and competition law at Goethe University, Frankfurt am Main/Germany. He has published five books and more than seventy articles in these fields, with a focus on the theoretical foundations of intellectual property law.
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A Critique of the Ontology of Intellectual Property Law

ALEXANDER PEUKERT
Goethe University (Frankfurt)

Translated by
GILL MERTENS
## Contents

**Acknowledgements**

**1 Introduction**

1.1 The Paradigm of the Abstract IP Object  
1.2 Irritations: Differences between Real and Intellectual Property Law  
1.3 Reactions  
1.4 Objectives and Plan of the Study  
1.5 Terminology and Preconceptions

**2 Two Ontologies**

2.1 The Ontology of Abstract Objects

2.1.1 Characteristics and Application to Intellectual Property  
2.1.2 Metaphysics: An Obsolete Anachronism?  
2.1.3 The Implausibility of the Abstract IP Object

2.2 Social Ontology

2.2.1 Fundamentals of John Searle’s Social Ontology  
2.2.2 Application to IP Objects

**3 Two Abstractions**

3.1 Abstraction 1: General Terms for Similar Artefacts

3.1.1 A New Artefact  
3.1.2 The Master Artefact  
3.1.3 Secondary Artefacts

3.2 Abstraction 2: The Idea of the Abstract IP Object

3.2.1 The Historicity of Conditions for Abstraction 2  
3.2.1.1 New Technologies  
3.2.1.2 From Nameless Imitation to the Ingenious Work

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### Contents

3.2.1.3 From Dirigiste Regulation of Economic Activity to the Market Economy  
3.2.1.3.1 Economic Regulation through Privileges  
3.2.1.3.2 The Formation of Markets and the Commodification of All Inputs and Outputs  
3.2.2 The Emergence of the Abstract IP Object  
3.2.2.1 A History of Terms: Work, Invention, Design  
3.2.2.2 The Abstract IP Object in Legal Texts of the Eighteenth and Nineteenth Centuries  
3.2.2.2.1 France  
3.2.2.2.2 The United Kingdom and the United States of America  
3.2.2.2.3 Germany  

4 Interim Summary: An Implausible Paradigm  

5 The Legal Explanatory Power of the Two Ontologies  
5.1 The Structure and Practice of Current IP Law  
5.1.1 Scope of Application of the Prevailing Paradigm  
5.1.1.1 Trademark Law  
5.1.1.2 Rights in Innovation, in Particular Rights Related to Copyright and Plant Variety Rights  
5.1.2 An Action- and Artefact-Based Reconstruction of IP Rights  
5.1.2.1 The Master Artefact as the Reference Point of IP Rights  
5.1.2.2 Secondary Artefacts  
5.1.2.3 Regulation of Behaviour in Relation to Secondary Artefacts  
5.2 Structural Differences between Real Property and IP Rights  
5.3 Particularities of the Justification of IP Rights  
5.3.1 Effect and Justification of IP Rights  
5.3.2 Economic Analysis of IP Rights  
5.4 The Normativity of the Abstract IP Object  
5.4.1 The Raison d’Être of the Abstract IP Object Is Its Normativity  
5.4.2 Proof: The Reach of Physical and Idealistic IP Regimes  
5.4.3 The Instability of the Distinction between Law and Reality  

6 Normative Critique of the Abstract IP Object  
6.1 Radical Critique without Extreme Consequences  
6.1.1 In Support of a New Understanding of Reality
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1.2 In Support of the Form of Exclusive Rights</td>
<td>145</td>
</tr>
<tr>
<td>6.1.3 Alternative Terminology</td>
<td>147</td>
</tr>
<tr>
<td>6.2 Change of Perspective: From Immaterial Objects to Actors, Actions and Artefacts</td>
<td>150</td>
</tr>
<tr>
<td>6.2.1 Actors and Actions</td>
<td>151</td>
</tr>
<tr>
<td>6.2.1.1 Innovators and Investors</td>
<td>151</td>
</tr>
<tr>
<td>6.2.1.2 Manufacture and Use of Secondary Artefacts by Third Parties</td>
<td>154</td>
</tr>
<tr>
<td>6.2.2 Master Artefacts, Secondary Artefacts and Similarity</td>
<td>158</td>
</tr>
<tr>
<td>Summary in Theses</td>
<td>161</td>
</tr>
<tr>
<td>Bibliography</td>
<td>171</td>
</tr>
<tr>
<td>Index</td>
<td>201</td>
</tr>
</tbody>
</table>
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