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
### Table of Contents

#### 3.2.1.3 From Dirigiste Regulation of Economic Activity to the Market Economy
- Economic Regulation through Privileges
- The Formation of Markets and the Commodification of All Inputs and Outputs

#### 3.2.2 The Emergence of the Abstract IP Object
- A History of Terms: Work, Invention, Design
- The Abstract IP Object in Legal Texts of the Eighteenth and Nineteenth Centuries
  - France
  - The United Kingdom and the United States of America
  - Germany

#### Interim Summary: An Implausible Paradigm

#### The Legal Explanatory Power of the Two Ontologies
- The Structure and Practice of Current IP Law
  - Scope of Application of the Prevailing Paradigm
  - Trademark Law
  - Rights in Innovation, in Particular Rights Related to Copyright and Plant Variety Rights
- An Action- and Artefact-Based Reconstruction of IP Rights
  - The Master Artefact as the Reference Point of IP Rights
  - Secondary Artefacts
- Regulation of Behaviour in Relation to Secondary Artefacts

#### Structural Differences between Real Property and IP Rights
  - Effect and Justification of IP Rights
  - Economic Analysis of IP Rights

#### The Normativity of the Abstract IP Object
- The Raison d’Être of the Abstract IP Object
  - Is Its Normativity
- Proof: The Reach of Physical and Idealistic IP Regimes
- The Instability of the Distinction between Law and Reality

#### Normative Critique of the Abstract IP Object
- Radical Critique without Extreme Consequences
  - In Support of a New Understanding of Reality
6.1.2 In Support of the Form of Exclusive Rights 145
6.1.3 Alternative Terminology 147
6.2 Change of Perspective: From Immaterial Objects to Actors, Actions and Artefacts 150
  6.2.1 Actors and Actions 151
  6.2.1.1 Innovators and Investors 151
  6.2.1.2 Manufacture and Use of Secondary Artefacts by Third Parties 154
  6.2.2 Master Artefacts, Secondary Artefacts and Similarity 158

Summary in Theses 161
Bibliography 171
Index 201