

Conference Report: Zurich IP Retreat 2025 – Small Steps or Giant Leap? Requirements and Scope of Protection in IP Law

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I. Topic and introduction

The Zurich IP Retreat 2025, held on September 12–13 and framed by the scenic Lake Zurich, gathered leading voices in intellectual property law to explore the theme “Small step or giant leap? – Requirements and scope of protection in IP law.” Building on the success of previous retreats, this year’s discussions examined the correlation—and possible symmetry—between the conditions for obtaining protection and the scope of rights across various IP domains.

Over the course of two days, judges, academics, practitioners, and officials engaged in lively debate through thematic panels dedicated to patent, copyright, design, trademark, and unfair competition law. Comparative perspectives, empirical research, and doctrinal analysis enriched the exchanges, offering a comprehensive view of how legal standards evolve and interact across jurisdictions. This report provides a structured overview of the discussions, highlighting key insights, case law, and questions for future scholarship and practice.

II. Dogmatic Localization

The first panel of the Zurich IP Retreat 2025 was moderated by Mark Schweizer (President, Swiss Federal Patent Court) and opened by Dr. Conrad Weimann (Attorney at Law, Switzerland) with a presentation on five key concepts shaping the historical development of IP law: Instrumental Thinking, Creation, Property, Marginalization, and Functionality. He described Instrumental Thinking as viewing IP law as a tool for progress, grounded in incentives, rationality, and empirical facts. Creation was presented as a basis for protection, emphasizing originality and individual effort, though strict standards may exclude many works. In the Property segment, he traced the shift from treating immaterial goods like physical property to more refined definitions and thresholds. Marginalization focused on cost-benefit analysis and the simplification of complex systems. Finally, Functionality explored the alignment of legal rules with economic principles, noting that full functionalization of IP is inherently contradictory due to its multilevel nature. The presentation highlighted how these layered frameworks continue to influence modern IP policy and legal structures. The overarching takeaway was that IP law has historically evolved through conceptual layers, each contributing to the shaping of contemporary protection standards and encouraging reflection on their ongoing impact.

The panel continued with a presentation by Katharina de la Durantaye (Professor, Humboldt University of Berlin) titled “Requirements for and Scope of Protection – A Plea for Differentiation”. She critically examined the relationship between the conditions for obtaining IP protection and the breadth of that protection. Rather than assuming a universal symmetry, she argued for viewing this relationship as a correlation that varies depending on the specific objectives of each IP right. Drawing on the “bundle of rights” framework, she emphasized that the primary function of IP law is to incentivize creativity and innovation. Her analysis highlighted distinct patterns across IP domains. In patent law, protection correlates linearly with the level of inventiveness, rewarding “big technological leaps.” Copyright, by contrast, values “relatable creativity” and evolves once the threshold of originality is met, with protection plateauing thereafter. Design law also encourages evolutionary progress, showing a similar correlation between individuality and protection. Trademark law presented the most complex picture: while distinctiveness increases protection up to a point, Dr. de la Durantaye questioned the justification for automatically granting broader protection to stronger marks, noting risks of market distortion. She concluded with a clear call for a differentiated approach to requirements and scope of protection, tailored to the purposes of each IP right, in order to shape more flexible and effective policy.

III. Symmetry in Patent Law

The second panel, moderated by Tobias Bremi (Patent Attorney and Judge, Swiss Federal Patent Court), shifted the focus to the concept of symmetry in patent law, exploring how the requirements for protection align—or diverge—from the scope granted.

Dr. Klaus Grabinski (President, Unified Patent Court), delivered a presentation on the principle of symmetry in European patent law, emphasizing the importance of consistent interpretation of patent claims in both validity and infringement contexts. He began by outlining the central role of the patent claim, which defines the subject matter and scope of protection under the EPC. For legal coherence, the claim must be interpreted identically when assessing both patentability and infringement. The second part of the presentation focused on claim construction, highlighting three key parameters: the perspective of a person skilled in the art (PSA), the relevant time (priority date), and the materials used for interpretation (description and drawings). Dr. Grabinski stressed that interpretation must be technical and functional, not merely linguistic, and that the priority date ensures uniformity and avoids asymmetry. He then addressed the doctrine of equivalence, explaining how variants not literally covered by the claim may still infringe if they produce the same effect and are considered obvious to the PSA. He discussed the *Formstein* defence, which tests whether such variants would themselves be patentable, and the challenge of unforeseeable equivalence, where later technological developments may retroactively render a variant obvious. The presentation concluded with a practical example involving cerium nanoparticles in diesel engines, illustrating how a variant unknown at the priority date could still fall under the scope of the patent through equivalence.

Advocate-General Robert van Peurseem (Dutch Supreme Court) presented the Dutch approach to symmetry in patent law, emphasizing the consistent interpretation of claims for both validity and infringement. He reaffirmed the central role of claims, which must be construed “in context” using the description and drawings. The relevant time for interpretation is the priority date, except in cases involving unforeseeable equivalents, where Dutch courts may consider the knowledge of the person skilled in the art (PSA) at the time of infringement. The Dutch Supreme Court applies a two-step approach to infringement—first assessing literal infringement, then considering equivalents—aligned with UK and German case law. While the Netherlands lacks a formal doctrine of equivalents, courts frequently apply the function-way-result test and assess insubstantial differences.

Van Peurseem also outlined the catalogue of viewpoints used by Dutch judges, including the inventive concept, the degree of innovation, and disclaimers in the description. He noted that prosecution history may be used against the patentee but cautiously in their favor. In cases involving equivalents unknown at the priority date, Dutch courts may still find infringement if the POSA could recognize the variant as equivalent at the time of infringement. In conclusion, Van Peurseem stressed that safeguarding symmetry is a judicial responsibility, not the patentee’s, and while jurisdictions differ in emphasis, their underlying principles are largely aligned.

Mr. Justice Richard Meade of the (Judiciary, High Court of England and Wales) explored the UK approach to symmetry in patent law, focusing on the patentee’s responsibility and the evolving doctrine of equivalents. He began by emphasizing that a patent specification is a unilateral statement by the patentee, who bears full responsibility for its clarity and scope. Courts are not tasked with correcting drafting errors or extending protection beyond what is claimed, even if the patentee misunderstood their own invention. Using the *Pemetrexed* case (*Actavis v Lilly*) as an example, Meade illustrated how a drafting omission led to a narrow claim (sodium salt only), forcing the patentee to rely on equivalence to cover broader embodiments. This raised questions about symmetry, as UK law traditionally held that claim interpretation should be consistent for both validity and infringement. However, the Supreme Court in *Actavis* introduced a two-step approach—literal interpretation followed by an assessment of equivalents—challenging the previous symmetry. He discussed the *Formstein* defence, noting that UK courts have rejected invalidation by equivalence. Instead, if an equivalent is obvious or lacks novelty, the claim scope is confined to its literal meaning. This avoids penalizing patentees for drafting narrowly but may incentivize reliance on equivalence. Meade also addressed the issue of unforeseeable variants, explaining that under *Actavis*, the skilled person is deemed to know the variant works, making it likely to be considered obvious unless excluded by the specification. This broadens protection but risks overextending infringement to all functionally similar variants. In conclusion, Meade highlighted the tension between fairness to third parties and the patentee’s autonomy, noting that while UK law aims for balance, the evolving doctrine of equivalents continues to challenge the principle of symmetry.

The panel demonstrated that, although approaches to symmetry in patent law differ across European jurisdictions—particularly regarding the doctrine of equivalents and claim interpretation—

all practices aim to maintain consistency between validity and infringement assessments, balancing patent protection with the rights of third parties.

IV. Symmetry in Copyright Law

Chaired by Michael Ritscher (Attorney at law, President of INGRES, Switzerland), the panel included Cyrill Rigamonti (Professor, University of Bern), Estelle Derrclaye (Professor, University of Nottingham), Sven Klos (Attorney at law, Netherlands), and Julie Samnadda (Legal service of the European Commission). The discussion focused on the alignment between protection requirements and infringement tests.

Cyrill Rigamonti presented the Swiss approach to symmetry in copyright law, focusing on the relationship between protection requirements and infringement analysis. He began by outlining the requirements for copyright protection under Swiss law, emphasizing that works must be intellectual creations with individual character, regardless of their value or purpose. The originality threshold is defined by statistical uniqueness — a work lacks protection if it does not deviate from convention and could easily be replicated through similar effort. Importantly, individual character depends on the scope of creative freedom, not on the author’s personality. In discussing infringement, Rigamonti explained the two-step inquiry: first, identify the essential elements that give the work its individual character; second, compare these with the allegedly infringing object, focusing on the overall impression. The degree of originality influences the scope of protection, especially for functional items, where protection is proportionate to the creative input. He also addressed derivative works, which must themselves have individual character while still allowing the original work to remain identifiable. In his concluding remarks, Rigamonti reflected on symmetry as a principle of justice and a driver of legal outcomes. However, he cautioned that symmetry might also contribute to an overextension of copyright protection, citing Article 2(3bis), which grants protection to certain photographic depictions even without individual character.

Julie Samnadda presented a detailed overview of the evolving interpretation and scope of copyright law within the EU framework, focusing on the concept of “work” and its legal implications. She began by comparing key directives—Directive 2001/29 on copyright and Directive 2009/24 on computer programs—highlighting how undefined terms like “work” are interpreted autonomously by the Court of Justice of the European Union (CJEU). Samnadda emphasized that EU copyright law selectively applies a “high level of protection,” especially under international obligations such as the Berne Convention and WIPO treaties. She discussed the CJEU’s decision in *Levola*, which established two cumulative conditions for a subject matter to qualify as a “work”: originality (as the author’s own intellectual creation) and identifiability with sufficient precision and objectivity. Importantly, copyright protects expressions—not ideas, procedures, or methods. The presentation also addressed the scope of protection for works of applied art, referencing cases like *Cofemel*, *Brompton Bicycle*, and *Kwantum*, where courts grappled with the boundaries of copyright in functional design. Samnadda noted that the EU copyright acquis remains silent on infringement

tests, leaving room for broad interpretation of terms like “reproduce,” “communicate,” and “distribute” as autonomous concepts under EU law.

Estelle Derclaye presented findings from her joint research with Prof. Gilles Stupfler on the harmonization of copyright law across EU Member States and the UK, based on 50 recent national court decisions. The study examined whether national courts comply with the EU copyright acquis, particularly regarding protection requirements and infringement tests. The methodology involved assessing whether decisions contradicted the letter or spirit of EU directives and CJEU case law. Key findings revealed that originality and infringement are the most litigated areas and also where non-compliance is most frequent. Courts in several Member States continue to apply outdated criteria such as artistic merit, novelty, or author’s intention, despite CJEU rulings like *Cofemel*. For 3D works, countries like Germany and Italy still rely on artistic value. In terms of infringement, many courts use the overall impression test, sometimes combined with a comparison of similarities and differences, rather than strictly applying the *Infopaq* test. The Netherlands was highlighted as an example where courts interpret originality correctly but diverge in infringement analysis. Derclaye concluded that the lack of symmetry between protection and infringement tests contradicts CJEU guidance. She suggested that tradition, resistance, misunderstanding, or unclear case law may explain the inconsistencies, especially in cases involving works of applied art.

Klos explored the challenges of applying copyright protection to functional works, which lie at the intersection of artistic expression and utilitarian design. Drawing on the Szpunar opinion in *USM – Asplund*, he highlighted the ambiguity surrounding works such as software, maps, architectural models, and scientific illustrations, which blur the line between art and function. He emphasized that while all works are equal under copyright law, some categories—particularly functional ones—face stricter scrutiny. The Berne Convention lists applied art and scientific illustrations as protectable, yet courts often apply inconsistent standards. Klos dissected the concept of originality, arguing that it remains vague and subjective. He proposed a two-tier test: first, identify free and creative choices made by the author (i.e., choices not dictated by technical constraints or standard practices); second, assess whether these choices reflect the author’s personality, which is the cornerstone of originality. He warned against conflating non-functional choices with creative ones, noting that even non-standard or aesthetic decisions must pass a qualitative merit test to be deemed creative. Importantly, he rejected the idea of applying a higher threshold for copyright protection to designs, affirming the *Cofemel* principle that all works—including “applied art”—must be assessed under the same criteria. In conclusion, Klos questioned whether free and creative choices alone suffice for protection, suggesting that a separate reflection test may be necessary to confirm that the work bears the author’s personal imprint. This nuanced approach aims to balance legal certainty with the diversity of creative expression in functional works.

The panel highlighted that achieving symmetry between protection requirements and infringement tests remains challenging in practice, particularly for functional works, where courts often apply varying standards of originality and scope of protection. Nonetheless, the discussion emphasized

the need for consistent application of EU copyright principles to ensure legal certainty while respecting the creative freedom of authors.

V. Symmetry in Design law

Moderated by Stefan Bechtold (Professor, ETH Zurich), this panel featured Henning Hartwig (Attorney at law, Germany), Robert van Peurseem (Advocate General, Dutch Supreme Court), and David Stone (Solicitor, UK). The speakers analyzed the explicit symmetry embedded in design law, particularly the link between the designer’s freedom and the scope of protection.

Henning Hartwig presented a detailed analysis of the concept of symmetry in EU design law, focusing on the relationship between scope of protection, validity, and infringement. He began by outlining how the designer’s freedom influences the scope of protection: a greater freedom—due to a low concentration of prior designs—leads to a broader scope, while limited freedom narrows it. The distance from prior art also plays a key role: the more a design departs from existing forms, the stronger its protection. Hartwig introduced a series of rules derived from case law, including the principle that the priority date is the reference point for assessing freedom and departure. He emphasized that a broad scope of protection means that even significant visual differences may not suffice to avoid infringement if the overall impression remains similar. In discussing validity, he cited decisions from the German Federal Supreme Court, the General Court and the Austrian Supreme Court, showing that the same criteria—overall impression on the informed user—apply to both validity and infringement. A design with high individual character should enjoy broad protection, and vice versa. Hartwig concluded by proposing “reciprocity” as a more accurate term than “symmetry” to describe the dynamic interrelation between legal parameters in design law. He argued that terms like “interaction” or “proportionality” fail to capture the nuanced balance between design freedom, departure from prior art, and legal consequences.

Robert van Peurseem explored various (a)symmetry issues in Dutch design law practice, highlighting inconsistencies between legal concepts and their application. He began with the basic rule that a design’s individual character determines its scope of protection. Drawing parallels with patent law, he explained that greater individual character implies a wider scope of protection and higher risk of infringement. In the *Apple/Samsung* case, the Dutch Supreme Court found Apple’s design valid but with only moderate protection, leading to a finding of non-infringement by Samsung. Peurseem then addressed the impact of social media on design protection, using the *Puma-Rihanna* case. Rihanna’s early Instagram post showing the shoe design undermined its novelty, illustrating how public exposure can unintentionally destroy individual character. He also discussed the “informed user” concept, noting that recent CJEU case law has raised the novelty threshold, blurring the line between informed users in different sectors. This creates asymmetry, as the same user standard is applied across unrelated fields, such as industrial drainage and home shower systems. Turning to copyright, Peurseem noted that it remains more popular than design rights in the Netherlands for protecting industrial design. While EU law allows cumulative protection, the *Cofemel* decision

introduced ambiguity by suggesting that only certain designs enjoy copyright protection—without defining those situations. Pending cases (*Asplund* and *Haller*) may further complicate this. Finally, he highlighted that unregistered Community designs can protect works that fail the copyright originality test, as seen in Dutch cases involving a bicycle basket and archive box. This raises questions about symmetry between copyright and design law, especially when one system compensates for the limitations of the other.

David Stone examined the correlation between protection requirements and scope of protection in UK design law, focusing on the recurring issue of designs being valid but not infringed. He reviewed several high-profile cases from the Court of Appeal of England & Wales, including *Procter & Gamble v Reckitt Benckiser*, *Dyson v Vax*, *Apple v Samsung*, *Magmatic v PMS*, and *Pulseon v Garmin*. In each, the registered design was found valid, but the alleged infringing product did not produce the same overall impression, leading to a finding of non-infringement. Stone highlighted how courts often rely on nuanced visual distinctions—such as the “snake head” vs “lizard head” analogy in *Procter & Gamble*—to justify differing impressions. In *Apple v Samsung*, the informed user’s familiarity with the design corpus reduced the impact of similarities, emphasizing differences in the back and sides. He noted that *Magmatic v PMS* was particularly regrettable, as the original and clever “*Trunki*” design was deemed valid but not infringed. Only recently, in *Marks & Spencer v Aldi*, did the Court of Appeal break the cycle by finding both validity and infringement, marking a shift in judicial approach. Stone also referenced several IPEC and High Court decisions where infringement was found and upheld, suggesting that lower courts may be more willing to recognize infringement in practice. He concluded with the recent CJEU decision in *LEGO v Pozitiv Energiaforrás*, which clarified the standard for the informed user—someone with sectoral familiarity but not technical expertise—reinforcing the importance of balancing legal interpretation with practical understanding.

The panel highlighted that while design law strives for symmetry between validity and infringement, practical application often reveals nuanced asymmetries, influenced by designer freedom, prior art, public exposure, and the informed user standard. Across EU, Dutch, and UK practice, legal protection is shaped not only by formal rules but also by dynamic judicial interpretation, underscoring a delicate balance between safeguarding designers’ rights and ensuring predictability for third parties.

VI. Symmetry in Trademark law

Led by Christoph Gasser (Attorney at law, Executive Secretary of INGRES, Switzerland), the panel included Ulrich Hildebrandt (Attorney at law, Germany), Richard Meade (Judiciary, High Court of England and Wales) and Philippe Gilliéron (Attorney at law, Switzerland). The panelists examined how the strength of a trademark influences the scope of its protection, whether stronger marks deserve broader legal coverage, how applicants can shape protection through strategic filings, and how these principles play out in practice and case law.

Ulrich Hildebrandt explored the concept of symmetry in trademark law from German law perspective, focusing on how the distinctiveness of a trademark influences its scope of protection and the likelihood of confusion. He began by contrasting weak trademarks, which are closer to descriptive or generic terms, with well-known trademarks, which enjoy broader protection due to their market recognition. Historical cases such *OSRAM v DILRAM* illustrated how even minor similarities can lead to confusion when a mark is deeply engraved in consumer memory. The court emphasized that the more familiar a sign is, the greater the risk of association—even with slight resemblance. He also challenged the assumption that consumers always notice small differences, arguing that fame increases the risk of confusion, not reduces it. He questioned whether diluted trademarks—those widely known but used across many contexts—still retain strong protection. He also critiqued the notion of inherently highly distinctive trademarks, suggesting that such classifications often serve more as marketing rhetoric than legal reality. EUIPO guidelines typically assign normal distinctiveness to non-descriptive marks unless exceptional circumstances apply, as in the *ALADDIN* and *SHARK* cases. He concluded by referencing the *Sabèl* decision (CJEU C-251/95), which confirmed that market recognition plays a key role in assessing confusion. Trademark law should better reflect the dynamic interplay between consumer perception, distinctiveness, and legal protection, rather than relying on static categories.

Richard Meade presented an overview of the landmark *Sky v SkyKick* case, which addressed the issue of bad faith in trademark applications and its implications for the scope of protection. Sky, a well-known broadcaster, had registered trademarks across a wide range of goods and services, many of which it had no intention to use. SkyKick, an IT provider, challenged these registrations on the basis of bad faith, arguing that Sky's overly broad claims were not made with genuine intent to use. The case progressed through several judicial levels. High Court (2018): Justice Arnold referred questions to the CJEU, asking whether lack of intent to use could constitute bad faith. CJEU (Case C-371/18): Held that applying for a trademark without intent to use it for certain goods/services may constitute bad faith, especially if done to undermine third parties or gain unjustified exclusivity. High Court (2020): Implemented the CJEU ruling, partially invalidating Sky's marks but still finding infringement for the surviving goods/services. Court of Appeal (2021): Clarified that broad specifications are not inherently bad faith unless there is no intention to use for the claimed category. Supreme Court (2024): Although the parties settled, the Court issued a judgment confirming that using broad specifications to block others without intent to use constitutes bad faith. It also clarified the continued relevance of EU Regulation 2017/1001 in UK proceedings initiated before Brexit's transition period ended. Meade concluded that while symmetry between registration and use is desirable, courts now recognize that overreach in trademark applications can distort the system and must be corrected through invalidation, preserving only the genuinely used marks.

Philippe Gilliéron, presented an in-depth analysis of distinctiveness and its impact on the scope of protection in Swiss trademark law. He began by defining a trademark as a sign capable of distinguishing goods or services, emphasizing that distinctiveness—either original or acquired—is

the cornerstone of protection. A sign must possess at least minimal inherent distinctiveness or achieve it through secondary meaning, recognized by a significant portion of the relevant public. Gilliéron explored how consumer perception affects distinctiveness, noting that factors such as industry context and descriptive character matter more than pricing. He questioned whether copyrightability implies trademark distinctiveness, especially for logos or 3D objects, and compared the statistical uniqueness test in copyright to the “unusual and unexpected” standard in trademark law. He highlighted that even distinctive signs may be denied registration for competitive reasons, particularly if alternatives are readily available to competitors. He also discussed how distinctiveness varies across trademark categories, from weak marks (e.g., common words) to well-known marks, and how this influences the scope of protection. Importantly, Gilliéron explained that strong trademarks enjoy broader protection, including against association and reputation exploitation, while weak marks are more narrowly protected. He emphasized that investment, goodwill, and advertising function are also protected for strong marks, citing Swiss case law such as *Kamillosan* and *Nike*. In conclusion, he posed open questions about how these principles translate into practice, especially regarding consumer perception, initial interest confusion, and the granularity of protection ranging from direct confusion to broader associative risks.

The panel highlighted that a trademark’s distinctiveness and market recognition fundamentally shape the scope of its protection, while practical enforcement depends on consumer perception, risk of confusion, and intent to use. Across Swiss, German, and UK practice, courts balance strong protection for well-known marks with safeguards against overreach, illustrating the dynamic interplay between legal principles, strategic filings, and fairness to third parties.

VII. Symmetry In Unfair Competition Law

Moderated by Michael Ritscher, the final panel featured Jörn Feddersen (Judiciary, German Federal Court of Justice), Tim Dornis (Professor, University of Hannover) and Peter Picht (Professor, University of Zurich). The panel examined the boundaries of legal protection against product imitation under unfair competition law, emphasizing how market behavior, consumer perception, and competitive distinctiveness—not intellectual property rights alone—shape the limits of permissible conduct.

Judge Jörn Feddersen presented an in-depth analysis of product imitation under the German Act against Unfair Competition, focusing on how market behavior, rather than intellectual property rights, determines legal boundaries. He outlined the key legal provisions, particularly Section 4(3), which prohibits offering replicas of competitors’ goods if it causes avoidable deception, unreasonable exploitation, or involves dishonest acquisition of know-how. Importantly, the law targets offering imitations—not their manufacture—and aims to regulate deceptive or exploitative conduct, not protect product design per se. Feddersen detailed the broad interpretation of “goods or services”, which includes physical products, tools, appliances, medical devices, musical instruments, packaging, databases, advertising materials, and even fictional characters. However,

abstract ideas and basic design concepts are excluded unless they show competitive distinctiveness. He distinguished between slavish imitation (minimal differences from the original) and creative imitation (noticeable divergence), explaining that the latter may still be problematic if it causes deception of origin—either directly or indirectly. Courts assess ability to avoid by weighing interests: the original producer’s right to avoid confusion, the competitor’s right to use non-proprietary solutions, and the public interest in free competition. The presentation also addressed unreasonable exploitation, such as image transfer from the original to the imitation, and impairment, where the imitation’s lower quality damages the original’s reputation. Feddersen emphasized that protection under unfair competition law is flexible, fact-driven, and not time-limited, provided the legal criteria are met.

Tim Dornis presented a nuanced exploration of product imitation under German unfair competition law, focusing on how legal protection interacts with technical necessity and market behavior. He examined three landmark cases—*Exzenterzähne*, *Hartplatzhelden.de*, and *Femur-Teil*—to illustrate how Section 4(3) of the German Unfair Competition Act addresses deception, misappropriation, and impairment. Dornis emphasized that technically necessary product features cannot establish competitive distinctiveness, but freely interchangeable features may do so if consumers associate them with origin or quality. In *Hartplatzhelden.de*, the court ruled that unfair misappropriation does not automatically entitle producers to all forms of exploitation, especially when access can be controlled. The *Femur-Teil* case highlighted that inferior imitations may impair the reputation of original products if they share a nearly identical appearance. Dornis also discussed the economic rationale behind protection, referencing Richard Posner’s “goose that lays the golden eggs” test, which evaluates whether free-riding threatens the viability of a product. He concluded that unfair competition law must balance the cost of misperception against the benefits of market entry, without creating perpetual monopolies or conflicting with the IP system.

Peter Picht delivered a thought-provoking presentation on the evolving landscape of product design protection, focusing on the interplay between copyright, design law, and unfair competition. He highlighted the terminological distinctions: copyright requires originality, design law demands individual character, and unfair competition hinges on competitive distinctiveness. Picht questioned whether applied art works are losing protection through “designification,” and whether the justification for product design protection is under pressure. He contrasted the “Ritscher rule” (worth copying equals worth protecting) with the U.S. Supreme Court’s view that imitation drives competition. The presentation explored economic implications, referencing Dornis’s analysis of dynamic efficiency and the narrowing of protection for copies. Picht also examined the impact of AI, suggesting it may disrupt traditional protection regimes by accelerating product lifecycles and enabling mass customization, thereby weakening copyright and unfair competition safeguards. He proposed that unregistered design rights might become increasingly vital. Ultimately, Picht raised critical questions about whether current legal frameworks can still justify robust protection for product design in a rapidly changing technological and economic environment.

Overall, the presentations highlighted the dynamic and fact-driven nature of unfair competition law, showing how courts balance protection of original products with free competition, while also raising questions about the adequacy of current frameworks in the face of technological change, mass customization, and AI-driven design.