

JOSEPH STRAUS

Joseph Straus (German) is a Professor of Law (Universities of Munich and Ljubljana) and Director at the Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law, Munich. Visiting Professor of Law, Cornell Law School, Ithaca, N.Y. (between 1989 and 1998); Distinguished Visiting Professor of Law, George Washington University School of Law (Spring 2001).

Joseph is author and co-author of numerous publications in the field of intellectual property law, especially in the field of the protection of biotechnological inventions. Consultant to OECD, WIPO, UNCTAD, UNIDO, EC-Commission, World Bank, Scientific Services of the German Bundestag and the German Government, as well as the European Parliament and the European Patent Organisation. Active in many international associations, *e.g.* Chair Intellectual Property Rights Committee of the Human Genome Organisation (HUGO), Chair Programme Committee, International Association for the Protection of Intellectual Property (AIPPI).

PATENTING AND LICENCING PRACTICES FOR GENETIC INVENTIONS

Outcome of a German empirical study

JOSEPH STRAUS

Director, Max Planck Institute, Germany

Patents on genetic inventions, including on DNA sequences, have been granted since early 80s. Although they have been instrumental for the establishment of an entirely new biotech industry in the United States and lately also in Europe, they have continuously been put in question, at last in the course of implementation of the EU-Directive on the legal protection of biotechnological inventions (98/44). In particular, the extent of product protection, royalty stacking and the use of DNA patents for diagnostics present an issue of major concern in countries like France and Germany.

The German survey, performed on the basis of an extensive questionnaire used for personal interviews, covers some 25 institutions: university's and other research institutions, start-ups, biotech companies and large pharmaceutical companies. As will be shown in detail, contrary to the general concerns expressed in the public, the practice so far has not been faced with any particular difficulties related to patents in the area of genomics. Although it might be premature to draw far reaching conclusions from this survey it at least indicates that researchers, be it users of the patent system for protecting own inventions or be it users of inventions patented for third parties, seemingly can cope with the present situation. Deficiencies have been indicated, however, in the patent granting practice, which, seemingly requires too much time.