Contents

Ack	enowledgements	page xi
1	Introduction	1
	1.1 The Paradigm of the Abstract IP Object	1
	1.2 Irritations: Differences between Real and Intellectual Property Law	v 4
	1.3 Reactions	7
	1.4 Objectives and Plan of the Study	15
	1.5 Terminology and Preconceptions	20
2	Two Ontologies	24
	2.1 The Ontology of Abstract Objects	24
	2.1.1 Characteristics and Application to Intellectual Property	24
	2.1.2 Metaphysics: An Obsolete Anachronism?	2.6
	2.1.3 The Implausibility of the Abstract IP Object	28
	2.2 Social Ontology	34
	2.2.1 Fundamentals of John Searle's Social Ontology	35
	2.2.2 Application to IP Objects	42
3	Two Abstractions	50
	3.1 Abstraction 1: General Terms for Similar Artefacts	50
	3.1.1 A New Artefact	51
	3.1.2 The Master Artefact	52
	3.1.3 Secondary Artefacts	57
	3.2 Abstraction 2: The Idea of the Abstract IP Object	61
	3.2.1 The Historicity of Conditions for Abstraction 2	63
	3.2.1.1 New Technologies	64
	2.2.1.2 From Nameless Imitation to the Ingenious Work	60

viii Contents

	3.2.1.3 From Dingste Regulation of Economic Activity to the	
	Market Economy	74
	3.2.1.3.1 Economic Regulation through Privileges	74
	3.2.1.3.2 The Formation of Markets and the	,
	Commodification of All Inputs and Outputs	79
	3.2.2 The Emergence of the Abstract IP Object	8
	3.2.2.1 A History of Terms: Work, Invention, Design	89
	3.2.2.2 The Abstract IP Object in Legal Texts of the	
	Eighteenth and Nineteenth Centuries	80
	3.2.2.2.1 France	90
	3.2.2.2.2 The United Kingdom and the United States	
	of America	92
	3.2.2.2.3 Germany	97
4	Interim Summary: An Implausible Paradigm	101
5	The Legal Explanatory Power of the Two Ontologies	104
	5.1 The Structure and Practice of Current IP Law	102
	5.1.1 Scope of Application of the Prevailing Paradigm	104
	5.1.1.1 Trademark Law	109
	5.1.1.2 Rights in Innovation, in Particular Rights Related	
	to Copyright and Plant Variety Rights	107
	5.1.2 An Action- and Artefact-Based Reconstruction of IP Rights	110
	5.1.2.1 The Master Artefact as the Reference Point of IP Rights	110
	5.1.2.2 Secondary Artefacts	117
	5.1.2.3 Regulation of Behaviour in Relation to Secondary	
	Artefacts	12
	5.2 Structural Differences between Real Property and IP Rights	126
	5.3 Particularities of the Justification of IP Rights	128
	5.3.1 Effect and Justification of IP Rights	129
	5.3.2 Economic Analysis of IP Rights	131
	5.4 The Normativity of the Abstract IP Object	132
	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	132
	5.4.3 The Instability of the Distinction between	135
	Law and Reality	140
	·	140
6	Normative Critique of the Abstract IP Object	143
	6.1 Radical Critique without Extreme Consequences	143
	6.1.1 In Support of a New Understanding of Reality	1/12

(Contents	ix

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	
Index	201