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ACCOUNTING FOR IMPORTANT INTANGIBLE ASSETS IN DIFFERENT INDUSTRIES: A COMPARISON OF GERMAN COMMERCIAL CODE AND US GAAP

Abstract

Intangible assets take on increasing importance in nearly all branches of industry. As the analysis of accounting standards for intangible assets in different industries in this paper illustrates, there are many inconsistencies between different standards on accounting for intangibles within the context of US GAAP. In opposition to that, there are only few inconsistencies in accounting for diverse intangibles under German Commercial Code.

Moreover, it is striking that – compared to German accounting regulations – US standards on accounting for intangibles implicitly offer more alternative accounting treatments. In view of the main objective of US financial reporting, implicit offers of accounting alternatives have to be criticized. Nevertheless, regardless of the different goals of US and German financial reporting, not only the traditionally conservative German Commercial Code, but also the US standards on accounting for intangibles generally favour conservatism and objectivity.

Key words:

Intangible assets, financial reporting, accounting alternatives, German Commercial Code, US GAAP, conservatism, objectivity, inconsistencies, agency theory, music industry, film industry, software industry.

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1. Introduction

Nowadays, intangible assets take on increasing importance in nearly all branches of industry. Generally, intangible assets are defined as assets having no physical existence and whose value is derived from the special rights, privileges, or benefits which they convey.

Nevertheless, accounting for intangibles involves many problems. Specifically, one of the main issues is whether the costs of specifically identifiable intangible assets should be treated as assets placed on the balance sheet, or as an expense appearing on the income statement. Within the context of United States Generally Accepted Accounting Principles (US GAAP), there are many standards providing guidance on the accounting for intangible assets in different branches of industry, for instance for intangibles in the record and music industry and for intangibles in the film industry. In this paper, the general accounting rules for intangible assets and the particular rules for important specifically identifiable intangible assets in different industries are analyzed critically and compared with the relevant financial reporting treatment according to German Commercial Code. Especially, because of the different goals of US and German financial reporting, this analysis seems to be important.

2. General Rules

2.1. US GAAP

Firstly, intangible assets can be classified as specifically identifiable, for instance, patents or computer software, or as unidentifiable, e. g., goodwill. Secondly, another possibility to group intangible assets is based on the way they are acquired: they can either be internally developed or acquired from external sources.

Concerning accounting for acquired intangibles, SFAS No. 142 «Goodwill and Other Intangible Assets», which was issued in June 2001 and replaced APB Opinion No. 17 «Intangible Assets», provides general guidance. In this standard, the term «intangible assets» is used to refer to intangibles other than goodwill.

Paragraph 9 of SFAS No. 142 requires that an intangible asset acquired either individually or with a group of other assets other than in a business combination should be initially recognized and measured based on its fair value. Moreover, paragraph 9 of SFAS No. 142 stipulates that the cost of a group of assets acquired in a transaction other than a business combination has to be allocated to the individual assets acquired based on their relative fair values and does not result in the recognition of goodwill.

In contrast to this, intangible assets acquired in a business combination must be initially recognized and measured in conformity with SFAS No. 141. In this respect, SFAS No. 141 clarifies that an intangible asset acquired in a business combination should be recognized as an asset apart from goodwill only if this intangible asset results from contractual or other legal rights or if it is separable from the acquired entity [36: 39]. Under SFAS No. 141, an intangible asset is separable from the acquired entity if it can be sold, transferred, rented, licensed, or exchanged individually or in combination with a related contract, asset, or liability.

However, there is a special accounting rule for internally developed intangible assets in SFAS No. 142. Paragraph 10 of SFAS No. 142 requires that costs of internally developing, maintaining, or restoring intangible assets which are not specifically identifiable, which have indeterminate lives, or which are inherent in a continuing business and related to an entity as a whole, should be recognized as an expense as incurred. As mentioned in paragraph 10 of SFAS No. 142, that guidance has been taken over from APB Opinion No. 17. Accordingly, internally generated intangible assets that are specifically identifiable, that have determinable lives and that are separable from the continuing business can be capitalized. Thus, in this case, SFAS No. 142 offers an accounting alternative [22: 551].

For instance, SFAS No. 142 and SFAS No. 141 are generally applicable to accounting for patents, copyrights, trademarks, and trade names. As specified in the laws governing the legal rights of a patent holder, a US patent is a nonrenewable right granted by the Government of the United States giving the recipient control of the manufacture, sale, or other use of an invention for a period of 17 years from the date of the grant. Of course, patents may be purchased from others or generated internally as a result of research and development activities. A purchased patent has to be capitalized [17: 20–8; 22: 557]/ Its cost includes the purchase price and any related expenditures, such as attorney's fees. Nevertheless, if a company internally develops an intangible asset, – such as a patent, – only certain costs can be capitalized. The cost of an internally generated patent includes the legal and related costs of establishing the rights associated with the patent – for example, patent fees, litigation fees, and filing fees – but not any related research, experimental and developmental expenditures [13: 399]. Since those latter expenditures are research and development costs, they should be expensed as incurred in accordance with SFAS No. 2.

In comparison, a copyright is a grant by the federal government covering the right to reproduce, publish, sell, or otherwise control literary or artistic products. At present, the term of a copyright in the United States is the life of the author plus 50 years. Accounting for copyrights follows the same principles as those pointed out for patents. Accordingly, purchased copyrights must be capitalized. For copyrights developed internally, capitalizable costs include, for example, attorney's fees, expenditures for filing fees, and expenditures incurred in establishing the rights affiliated with the copyright.

While a trademark is a distinguishing symbol, label, or design used by a company in connection with a product or a service, a trade name identifies an enterprise. Registration of a trademark or a trade name with the US Patent Office establishes the right that enables the recipient to use exclusively a symbol, label, name, design, or other device applied for product identification. Accounting for trademarks and trade names follows the same principles as set forth for patents and copyrights. Hence, purchased trademarks and trade names are capitalized. If a trademark or a trade name is developed internally, capitalizable costs contain, for example, registration fees and legal fees connected with successful litigation involving the trademark or trade name [17: 12].

Apart from SFAS No. 142 and SFAS No. 141, there are numerous pronouncements providing guidance on the accounting for specifically identifiable intangibles. Many of these pronouncements are analyzed below.

2.2. German Commercial Code

According to German accounting laws, there is one decisive provision concerning accounting for intangibles: Paragraph 248 II of German Commercial Code specifies that recognition of noncurrent intangible assets which are not acquired externally against payment is not permitted. Thus, noncurrent intangible assets have to be capitalized only if they are acquired from another party in return for payment. Otherwise, the costs of intangible assets have to be expensed as incurred. This general accounting rule is founded on the principle of conservatism [1: 977], since, for many intangibles, neither the transactions nor the related costs are capable of reliable identification or estimation. This regulation is based on the fact that generally, intangibles cannot be quantified in monetary units with sufficient reliability. Therefore, a confirmation of the value of an intangible given by the market is necessary in order for the intangible asset to be capitalized [5: 23; 19: 74].

As a result, the costs of internally generated intangible assets, such as the costs of internally developed patents, the costs of internally developed copyrights, and the costs of internally generated trademarks and trade names, have to be expensed as incurred. Due to the fact that these intangibles are not acquired externally in return for payment, capitalization of the costs of these intan-

gibles is not permitted under paragraph 248 II of German Commercial Code. In opposition to that, purchased patents, purchased copyrights, purchased trademarks and purchased trade names must be capitalized.

Furthermore, the costs of an intangible asset obtained by way of exchange are capitalized [5: 236]. On the other hand, the costs of an intangible asset which is accepted as a gift have to be expensed as incurred under paragraph 248 II of German Commercial Code [1: 385].

As already mentioned, the general rule set forth in paragraph 248 II of German Commercial Code is applicable to noncurrent intangible assets. In contrast to this, the costs of current intangible assets are capitalized [52: 406].This rule is important for companies producing such intangibles in order to sell them. Since US accounting terminology includes only noncurrent assets in intangible assets [22: 550], the term «intangible assets» only refers to noncurrent intangible assets in the following.

In addition, it is worth stressing that paragraph 248 II of German Commercial Code is the only crucial regulation concerning accounting for noncurrent intangible assets. Paragraph 5 II of German Income Tax Law includes the same provision. In cases of litigation, the content of paragraph 5 II of German Income Tax Law is interpreted by the German Supreme Tax Court which is the court of ultimate resort in this field. Due to the authoritative principle and the reverse authoritative principle, these interpretations are also relevant to the content of paragraph 248 II of German Commercial Code.

3. Particular Rules for Important Specifically Identifiable Intangibles

3.1. Research and Development Costs

Within the context of US GAAP, accounting for research and development costs (R&D costs) is addressed by SFAS No. 2 «Accounting for Research and Development Costs». Research is defined in paragraph 8 of SFAS No. 2 as «planned search or critical investigation aimed at discovery of new knowledge with the hope that such knowledge will be useful in developing a new product or service … or a new process or technique … or in bringing about a significant improvement to an existing product or process». In opposition to this, paragraph 8 of SFAS No. 2 states that development «is the translation of research findings or other knowledge into a plan or design for a new product or process or for a significant improvement to an existing product or process whether intended for sale or use».

As a general rule, paragraph 12 of SFAS No. 2 requires that research and development costs should be charged to expense when incurred. Although research and development costs often benefit future periods, the decision to prescribe expensing them was made primarily to enhance comparability and to avoid reliability problems [11: 44; 20: 501; 22: 557; 42: 492; 48: 411; 50: 421; 53: 334–335]. Nonetheless, it should be emphasized that SFAS No. 2 does not apply to research and development costs incurred for others under a contractual agreement or to costs which are incurred in activities unique to the extractive industries.

Owing to the high degree of uncertainty about the future benefits of research and development projects and to the difficulty to demonstrate a direct relationship between research and development costs and specific future revenue generated, capitalization of research and development costs is not allowed under SFAS No. 2. According to paragraph 11 of SFAS No. 2, research and development contains the following elements: materials, equipment and facilities, personnel, intangibles purchased from others, contract services, and indirect costs. However, the inclusion of the costs of materials, equipment, facilities, and intangibles purchased from others in research and development expense needs further explanation. If these items have determinable alternative future uses, normal accrual procedures have to be followed. For instance, the costs of a machine which has alternative future uses are capitalized and depreciated over its estimated useful life. Nevertheless, the costs of materials, equipment, facilities, and intangibles purchased from others that have no determinable alternative future use (in research and development or other activities) must be included in research and development expense. Capitalization of these costs is not permitted.

Under German Commercial Code, research and development costs also have to be expensed as incurred. Principally, due to the principle of conservatism, capitalization of these costs is not allowed. Accordingly, research and development costs cannot be capitalized as an invention or as know-how, since the criterion «external acquisition by purchase» expressed in paragraph 248 II of German Commercial Code is not satisfied in these cases [21: 164]. Yet, for example, the costs of noncurrent assets like a machine, which is acquired for research and development purposes, have to be capitalized and depreciated over the estimated useful life regardless of determinable alternative future uses [21: 163]. Thus, accounting for research and development costs according to German Commercial Code closely corresponds to accounting for research and development costs under SFAS No. 2.

3.2. Record and Music Industry: Costs of Record Masters

Under US GAAP, SFAS No. 50 provides guidance regarding accounting in the record and music industry. Fundamental intangible assets in the record and music industry include record masters and copyrights. While accounting for copyrights follows that applied in other industries, accounting for record masters seems to be unique.

A record master is the media which contains the recording of the artist's performance. Costs of producing a record master include the costs of the musical talent, the costs of the technical talent for engineering, directing and mixing, the costs of using the equipment to record and produce the master, and studio facility charges. Normally, the media company bears a portion of the costs and recovers a portion of the costs from the artist out of designated royalties earned. Nevertheless, either party can contractually agree to bear all or most of the cost [4: 1088–1089].

When an artist's past performance and his current popularity provide a sound basis for presuming that the cost of a record master borne by a media company will be recovered from future sales, that cost should be recorded as an asset. Otherwise, these costs have to be expensed as incurred [34: 11].

According to a judgement of the German Supreme Tax Court, the cost of a record master borne by a media company qualifies as an internally developed noncurrent intangible [21: 201]. Hence, the relevant accounting regulation is paragraph 248 II of German Commercial Code. Consequently, the criterion «external acquisition by purchase» is decisive. Generally, the criterion «external acquisition by purchase» is interpreted in a very narrow way by the German Supreme Tax Court [18: 29–37]. Accordingly, the relevant rights connected with the intangible have to be acquired externally by purchase in order for the intangible to be capitalized. Therefore, the money must be paid from a third party in order to acquire the rights related to the intangible[1]. However, in the case of internally generated record masters, this criterion is not satisfied. As a result, the cost of a record master borne by a media company should not be capitalized as an intangible asset under paragraph 248 II of German Commercial Code. In view of the principles of conservatism and objectivity, capitalization of these costs is not allowed.

[1] See, for example, judgement of German Supreme Tax Court of 13.12.1984, VIII R 249/80, BStBl. II 1985, p. 289; judgement of German Supreme Tax Court of 25.08.1982, I R 130/78, BStBl. II 1983, p. 38; judgement of German Supreme Tax Court of 01.06.1989, IV R 64/88, BStBl. II 1989, p. 830.

3.3. Film Industry: Film Costs

Within the context of US GAAP, SOP 00-2 «Accounting by Producers or Distributors of Films» prescribes the accounting for costs related to all types of films. It is applicable to both producers and distributors of films. Films are defined in paragraph 5 of SOP 00-2 as «feature films, television specials, television series, or similar products (including animated films and television programming) that are sold, licensed, or exhibited, whether produced on film, video tape, digital, or other video recording format». SOP 00-2 specifies that film costs consist of direct negative costs, production overhead, and production period interest capitalized in accordance with SFAS No. 34 [41]. Direct negative costs include, for example, costs of story and scenario, costs of set construction and operations, wardrobe and accessories, and compensation of the cast, directors, producers, and other staff members [27]. Paragraph 29 of SOP 00-2 stipulates that film costs should be reported as a separate asset on the balance sheet.

In this context, exploitation costs are the direct costs associated with the distribution of a film. The accounting for these costs is also addressed by SOP 00-2. While the advertising cost component of exploitation costs is accounted for in accordance with SOP 93-7 [38: 334–336], all other exploitation costs – including marketing costs, promotion expenses, and other distribution expenses – should be expensed immediately.

Pursuant to German Commercial Code, accounting for film costs depends on whether the film is acquired externally or generated internally. Pursuant to judgements of the German Supreme Tax Court, films are intangible assets [52: 1600]. Consequently, the decisive accounting rule for noncurrent film assets is paragraph 248 II of German Commercial Code. Thus, once again, the criterion «acquisition from another party by purchase» proves to be determining. Therefore, if a film is acquired externally in return for payment, the costs of this film have to be capitalized.

On the contrary, the costs of internally developed films should be expensed as they are incurred. Since internally generated films are not acquired from external sources against payment, capitalization of film costs is prohibited under paragraph 248 II of German Commercial Code. Owing to the principle of conservatism, the costs of internally developed films have to be expensed immediately.

3.4. Software Industry: Computer Software Costs

In the United States, SFAS No. 86 specifies accounting for the costs of computer software to be sold, leased, or otherwise marketed as a separate product or as part of a product or a process. Concerning software developed internally for sale (or lease, etc.) to others, SFAS No. 86 prescribes that costs incurred prior to the point at which technological feasibility is established have to be expensed when incurred as research and development costs. According to paragraph 4 of SFAS No. 86, technological feasibility is established upon completion of a product design and detail program design or – in the absence of a detail program design – upon completion of a working model. Thereafter, software production costs should be capitalized. Yet, when the software product is available for release to customers, capitalization has to cease. However, computer software intended to be used as an integral part of a product or a process should not be capitalized until both technological feasibility has been established and all research and development activities for the other components have been finished.

Under SFAS No. 86, purchased computer software that has an alternative future use should be capitalized when acquired and subsequently accounted for in accordance with its intended use. Nevertheless, the cost of purchased software which has no alternative future use is accounted for similarly to internally developed computer software.

Certainly, it should be stressed that the definition of technological feasibility for software development cost capitalization has been criticized repeatedly. This definition can be considered ambiguous, «creating inconsistency in its application» [15: 183]. Moreover, the amount of costs which an enterprise has to capitalize according to SFAS No. 86 largely depends on its choice of software production methods. Therefore, an enterprise can control the amount of software costs which it capitalizes «by establishing technological feasibility at a designated time during the production process»[51]. Generally, substantial «judgment is required to determine when technological feasibility has been established» [44: 732].

In contrast to this, SOP 98-1 provides guidance on accounting for the costs of computer software for internal use. Pursuant to SOP 98-1, the process of computer software development is divided into three stages: preliminary project stage (conceptual formulation and evaluation of alternatives, determination of existence of needed technology, and selection of alternatives), application development stage (coding and installation into hardware, for example), and post-implementation/operation stage (training and application maintenance). Costs of computer software that are incurred in the preliminary project stage should be expensed immediately, since these costs are similar to research and development costs. Nonetheless, once the computer software is at the application de-

velopment stage, capitalization of costs is stipulated if management having the relevant authority approves and commits to funding this software project and if it is probable that the project will be finished and that the resulting computer software will be used as originally intended [16: 91; 23: 98]. Per contra, costs incurred in the postimplementation/operation stage like internal and external training costs and application maintenance costs should be expensed as incurred.

According to German Commercial Code, the costs of computer software have to be capitalized if the software is acquired externally in return for payment [21: 196]. The criterion «acquisition against payment» is intended to serve as an evidence of the value of intangibles. Hence, this criterion is based on the principles of conservatism and objectivity. As a result, the costs of purchased computer software to be sold, leased, or otherwise marketed should be capitalized and amortized over the estimated useful life of the software, regardless of whether technological feasibility is established. In addition, the costs of purchased computer software for internal use should also be capitalized and amortized over the expected useful life of the software.

On the other hand, the costs of internally developed computer software – whether for internal use or for sale (or lease, etc.) to others – have to be expensed as incurred. Owing to the fact that internally developed computer software is not acquired in return for payment, capitalization of the costs of internally developed software is not permitted under paragraph 248 II of German Commercial Code. Due to the principles of conservatism and objectivity, the costs of internally developed computer software must be expensed immediately, even if external software specialists working based on contracts of service collaborate with internal software experts in order to develop the software [5: 236].

4. Critical Analysis

4.1. Prerequisites of Capitalizing Certain Intangible Assets

After all, it should be stressed again that within the context of US GAAP, there are numerous pronouncements providing guidance on accounting for intangible assets. From a code law perspective, there seem to be many inconsistencies between different standards on accounting for intangibles. For instance, under SFAS No. 50, the cost of a record master borne by a media company should be recorded as an asset if the artist's past performance provides a sound basis for assuming that the cost will be recovered from future sales. In opposition to this, SOP 00-2 stipulates that film costs should always be reported as a separable asset on the balance sheet – regardless of the past performance and the current popularity of the leading actor or of the producer. Although these two

intangibles are comparable, the established accounting rules seem to be contradictory.

Furthermore, there seems to be a conflict between the contents of SFAS No. 50 and SFAS No. 86. While recoverability is an important criterion according to SFAS No. 50, the aspect of recoverability is apparently not decisive under SFAS No. 86. Indeed, the Exposure Draft of SFAS No. 86 proposed the establishment of cost recovery for the product or the process prior to capitalization of any software costs [35: 40]. Nonetheless, SFAS No. 86 does not include this criterion.

Moreover, another inconsistency manifests itself in the contents of SFAS No. 86 and SFAS No. 2. Even American authors criticize that SFAS No. 86 expands the definitions of research and development drawn up in SFAS No. 2 [15: 183; 22: 560], since many costs incurred before the completion of the detail program design are fundamentally not part of research and development. Rather, these costs are incurred to perform an activity, such as other production processes.

Certainly, the background of the common law system casts light on many of these discrepancies. Against this background, many of these inconsistencies can be explained. Under common law, the existence of certain contradictions in different regulations – even regarding similar problems – does not seem to be extraordinary [3: 537; 54: 263]. Instead, the existence of discrepancies in two regulations shows that there are important differences concerning the underlying problems which are ruled. Accordingly, the contents of standards on accounting for similar intangibles often express that there are differences in the unique features of two branches of industry or of two categories of intangibles which have to be considered. Hence, against this background, for instance, the discrepancies between SFAS No. 50 and SOP 00-2 can be explained because these regulations mirror the particular attributes of these two branches of industry.

In contrast to this, under the German accounting laws, there is generally only one crucial regulation regarding accounting for intangibles. As discussed above, paragraph 248 II of German Commercial Code prescribes the accounting for intangibles. This general rule has to be applied to accounting of nearly all sorts of intangibles. Besides, as explained above, due to the authoritative principle and the reverse authoritative principle, the interpretations of the German Supreme Tax Court are also relevant in the German financial reporting. As a result, there are – if at all – only few contradictions in accounting for different intangibles under German Commercial Code. Generally speaking, this «thinking in generic principles and in systems» is typical of code law. Owing to this, there are really few inconsistencies in accounting for diverse intangibles – compared to US GAAP – under German Commercial Code.

4.2. US GAAP: More Alternative Accounting Treatments are Possible

In addition, it is striking that – compared to German accounting regulations – US standards on accounting for intangibles implicitly offer more alternative accounting treatments. For instance, under SFAS No. 86, the amount of cost which is capitalized largely depends on the organization of the programming process and especially on the date on which technological feasibility is established [22: 560]. Therefore, as emphasized above, the costs capitalized can vary considerably «depending on whether the coding and testing parallels or follows the detail program design» [22: 561].

Besides, according to SFAS No. 50 – as set forth above – if the past performance and the current popularity of an artist indicate that the cost of a record master borne by a media company will be recovered from future sales, that cost should be recorded as an asset. Certainly, if an artist is new, if he or she was previously unsuccessful, or if he or she does not have current popularity, that cost must be expensed immediately. Nonetheless, in many cases, there is substantial judgement involved in deciding whether the criterion for recording that cost as an asset is satisfied [47: 151]. For example, if an artist's past performance or his or her current popularity is rather «mediocre», judgement can greatly affect the financial reporting treatment of the cost of a record master borne by a media company. Thus, SFAS No. 50, in fact, also frequently offers an accounting alternative.

Of course, implicit offers of accounting alternatives must be criticized. In view of decision usefulness which is the main objective of the US financial reporting, these implicit offers of alternative accounting treatments seem to be really unfavourable, since they are opposed to the major purpose of the US financial reporting.

In opposition to that, provisions concerning accounting for intangibles under German Commercial Code include hardly any implicit offer of accounting alternatives – at least they include less of these implicit alternatives. Since German accounting rules generally do not permit capitalization of internally generated noncurrent intangibles, there are – if at all – only very few implicit offers of alternative accounting treatments.

Nevertheless, there certainly are disadvantages included in the German accounting provisions regarding accounting for intangibles as well. As pointed out above, according to paragraph 248 II of German Commercial Code, noncurrent intangible assets have to be capitalized only if they are acquired from another party in return for payment. The criterion «external acquisition against payment» serves as a confirmation of the value of an intangible asset due to a market transaction. However, if a parent company purchases an intangible asset

from the subsidiary – or vice versa – under the prevailing opinion, the criterion «external acquisition in return for payment» is satisfied [1: 384; 5: 235]. This must be criticized because in such a case there is often no clash of interests between the two parties. Consequently, it can be questioned if there is an affirmation of the value given by the market in such a case.

4.3. Dominating Role of Conservatism in this Area in Both Countries

As the discussion of accounting for different specifically identifiable intangibles illustrates, not only the traditionally conservative German Commercial Code, but also the standards within the context of US GAAP generally favour conservatism and objectivity. Arguably, paragraph 248 II of German Commercial Code is a very conservative general rule [1: 378], for it precludes all internally developed intangibles from capitalization. As set forth above, according to paragraph 248 II of German Commercial Code, the costs of internally developed intangibles have to be expensed as incurred. This general rule must be applied to all internally developed intangibles. In Germany, the principle of conservatism is traditionally very important due to the protection of creditors which is a significant aim of German financial reporting.

Indeed, the US standards on accounting for intangibles are generally also dominated by conservatism and objectivity. For instance, SFAS No. 2, which requires that all research and development costs should be expensed as incurred, is governed by the principle of conservatism [12: 588; 30: 243]. This solution enhances comparability and ensures consistency in practice. Moreover, it avoids reliability problems of how much to capitalize and over what period to amortize capitalized costs [22: 556]. The requirement that all research and development costs incurred internally be expensed immediately corresponds to German accounting.

Furthermore, under SFAS No. 86, the FASB has also chosen a conservative position in regard to the costs of computer software to be sold, leased, or otherwise marketed. Pursuant to SFAS No. 86, all costs should be expensed until the company has finished planning, designing, coding, and testing activities which are essential to establish that the software product can be produced to meet its design specifications. Since for many companies the detail program design occurs after the detailed logic of the program is complete and after coding has already started, SFAS No. 86 commonly results in most computer software costs being expensed immediately [12: 597; 22: 556; 26: 521].

As illustrated by the discussions of the numerous accounting standards on intangibles, not only in Germany, but also in the United States, the overall «rule of thumb is that when there is significant uncertainty about whether an expenditure should be capitalized or expensed, expense it» [2: 430]. This is in line with

the principles of conservatism and objectivity in accounting. Besides, it enhances comparability and consistency. Above all, as stressed above, it avoids reliability problems.

This result can also be explained with agency theory. Pursuant to agency theory, financial statements – and also parts of financial statements – can be interpreted as instruments to alleviate the information asymmetry between the management – as an agent – and the investor – as a principal. Generally, due to the necessary costs, investors are not able to monitor the management. Of course, if the management is forced to publish reliable information, the possibility of income manipulation can be reduced [9: 63; 14: 15–16; 28: 128]. Accordingly, the essential function of a balance sheet is to improve the decisions of investors.

Owing to the prevailing information asymmetry between management and investors, decision usefulness can only be reached if the investor can assess reliably the information that is published. Consequently, standardized, reliable and objective accounting standards are necessary in order to eliminate the possibility of income manipulation [7: 599; 24: 298–299]. Under paragraph 95 of SFAC No. 2, conservatism is defined as «a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered». Regarding specifically identifiable intangible assets, conservative and objective accounting standards are crucial in providing reliable information and eliminating broad opportunities for abuse [8: 586; 22: 556].

5. Summary

According to German Commercial Code, there is one decisive provision concerning accounting for intangibles: Paragraph 248 II of German Commercial Code stipulates that recognition of noncurrent intangible assets which are not acquired externally by purchase is not permitted. Therefore, noncurrent intangible assets are capitalized only if they are acquired in return for payment. Otherwise, the costs of intangibles have to be expensed immediately. This general accounting rule is founded on the principle of conservatism. Thus, the costs of internally developed intangibles, such as the costs of internally generated patents, the costs of internally developed copyrights, and the costs of internally generated trademarks and trade names have to be expensed as incurred.

Within the context of US GAAP, there are numerous pronouncements providing guidance on the accounting for specifically identifiable intangibles in different branches of industry. For instance, SOP 00-2 specifies accounting for intangible assets in the film industry. Moreover, SFAS No. 50 provides guidance regarding accounting for intangibles in the record and music industry. Besides, under SFAS No. 86, the FASB has chosen a conservative position in regard to the costs of computer software to be sold, leased, or otherwise marketed.

From a code law perspective, there are many inconsistencies between different standards on accounting for intangible assets under US GAAP. Since thinking in generic principles and systems is typical of code law, there are only few inconsistencies in accounting for diverse intangibles under German Commercial Code.

As the analysis of accounting regulations for different specifically identifiable intangible assets illustrates, not only the traditionally conservative German Commercial Code, but also the standards within the context of US GAAP generally favour conservatism and objectivity. Nevertheless, it is striking that – compared to German accounting regulations – US standards on accounting for intangible assets implicitly offer more alternative accounting treatments. In view of decision usefulness which is the main objective of US financial reporting, these implicit offers of alternative accounting treatments are unfavourable, as they contradict the main purpose of the US financial reporting.

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