

CROSS-BORDER ENFORCEMENT OF PATENTS

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Abstract

The dissertation complements the existing literature at the intersection of intellectual property and private international law by providing new insights into cross-border enforcement of patent rights. It is a case study of one specific type of patent enforcement problems – problems associated with enforcement across national borders – and also a study of the impact that private international law mechanisms may have on substantive law. The dissertation shows that notwithstanding patent law territoriality, even under current substantive and procedural laws, patent cases arise in which cross-border enforcement is necessary. It explains why such cases exist and what kind of cross-border enforcement problems they generate; it also analyzes current proposals aimed at facilitating smoother recognition and enforcement abroad of decisions issued in such cases, and concludes that the proposals can function only if countries agree on deeper harmonization of patent laws. In the short-term, the U.S. may solve the problem by entering into bilateral or limited regional treaties on cross-border enforcement because the problem is, at least for now, geographically confined. In the long-term, countries should complement discussions on the proposals that will facilitate cross-border enforcement with a reopening of negotiations on creating a world patent or a regional patent. The dissertation is based on an empirical study of patent cases filed in the U.S. and Germany; it also draws on an extensive comparative

study of the legislative and jurisprudential development of the patent laws of the two countries.

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