

CONTINUING CHALLENGES AGAINST THE BOUNDARIES: INTERNATIONAL
JURISDICTION AND CHOICE OF LAW ISSUES ARISING FROM INTERNATIONAL
INTELLECTUAL PROPERTY INFRINGEMENT

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ABSTRACT

The main purpose of this Note is to introduce and compare the current arguments regarding international jurisdiction rules for foreign patent/trademark infringement under the U.S. and Japanese legal systems. This Note will introduce cases regarding this issue in the U.S. and in Japan. Further, this Note will also introduce the arguments in the context of the proposed Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters (the "Hague Convention"). Through the negotiation process of the Hague Convention, the U.K. has proposed that patent/trademark infringement cases be subject to exclusive jurisdiction of the country that granted the patent/trademark. In this relation, this Note shows that Japanese courts have assumed international jurisdiction over foreign patent infringement cases, while U.S. courts have declined to assume international jurisdiction over foreign patent/trademark infringement cases at a national law level. This Note suggests that international jurisdiction rules should allow courts in countries, other than the country that granted the patent/trademark, to assume jurisdiction in accordance with their domestic rules regarding international jurisdiction.

In addition to the issue of international jurisdiction, this Note will also argue choice-of-law rules for foreign patent/trademark infringement under Japanese law. This Note suggests that the applicable law to claims arising from foreign patent/trademark infringement should be the law of the country that granted the patent/trademark in issue, irrespective of whether the claim is damage claim or injunction claim.

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