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.

Table of Contents

Abstract iv

Acknowledgments vi

Introduction 1

Chapter 1: Global Protection for Inventions 10

1.1 The Territorial Limitations of Patent Protection 12

1.2 A World Patent 17

1.3 Parallel Patents 21

1.3.1 Obtaining a Patent Abroad 22

1.3.2 Obtaining Patents in Multiple Countries 31

1.4 Obstacles to Global Protection 43

Chapter 2: Enforcing Parallel Patents 47

2.1 Private International Law Solutions to the Problem of Enforcement of Parallel Patents 52

2.1.1 The Brussels Regime 54

2.1.2 Mitigating the Problems Created By the Brussels Regime 61

2.1.3 The Hague Convention 72

2.1.4 The ALI Principles 74

2.1.5 The CLIP Principles 79

2.1.6 Obstacles to Implementation of Private International Law Solutions 82

2.1.6.1 Foreign Patents in U.S. Courts 84

2.1.6.2 Foreign Patents in German Courts 89

2.2 Institutional Solutions to the Problem of Enforcement of Parallel Patents 94

2.3 Obstacles to the Enforcement of Parallel Patents 99

Chapter 3: Protecting an Invention outside the Protecting Country 105

3.1 Inventions in the Means of Transportation 109

3.2 Inventions in Transit and Border Measures 116

3.3 Offers to Sell 129

3.4 Inventions Assembled Abroad from Components from a Protecting Country 138

3.5 Acts Abroad Contributing to Infringements in the Protecting Country ... 145

3.6 Acts in Multiple Locations 153

3.7 Limits on the Protection of an Invention outside the Protecting Country 159

Chapter 4: Limits of Protection under the Law of the Protecting Country 166

4.1 Foreign Parties before U.S. Courts − A Quantitative View of the Enforcement Problem 169

4.1.1 Patent Cases Filed in 2004 172

4.1.2 Cases Involving Foreign Parties 173

4.1.3 Cases Involving at least One Foreign Defendant and Cases with Only Foreign Defendants 177

4.2 Injunctions 184

4.2.1 Cross-Border Injunctions in U.S. Courts 186

4.2.2 Cross-Border Injunctions in Europe 196

4.2.3 Challenges to Enforcement of Injunctions Abroad 202

4.2.3.1 Enforcement of an Injunction 205

4.2.3.2 Enforcement of a Contempt Order 213

4.3 Monetary Relief 216

4.3.1 Punitive Damages 216

4.3.2 Ongoing Royalties 220

4.4 Additional Requirements of Recognition and Enforcement 222

4.5 Obstacles to Enforcement Abroad 226

Conclusions 232

Appendix 243

Bibliography 255

List of Figures and Tables

Figure 1: Cases Filed in 2004 174

Figure 2: Defendants by Domicile 178

Figure 3: Foreign Domiciles of Defendants 179

Figure 4: Countries Having Defendant Domiciliaries in the Largest Number of Patent Cases 181

Figure 5: Outcomes of Cases with Foreign Defendants 182

Figure 6: District Courts with the Highest Numbers of Filings in 2004 244

Figure 7: Cases Involving Foreign Defendants Filed in the Busiest District Courts in 2004 247

Figure 8: Cases in Which at Least One Party Was a Foreign Entity 248

Figure 9: Districts with the Highest Percentage of Cases Where at Least One Party Was Foreign 249

Figure 10: Cases in Which at Least One Defendant Was Foreign 251

Figure 11: Districts with the Highest Percentage of Cases Where at Least One Defendant Was Foriegn 252

Figure 12: Cases in Which All Defendants Were Foreign 253

Figure 13: Districts with the Highest Percentage of Cases Where All Defendants Were Foreign 254

Table 1: Most Common Countries of Domicile of Parties in Patent Cases 175