

European Law Institute (ELI) Annual Conference and Meeting 2019

Intellectual Property Law Special Interest Group's panel on

The Remedies in Intellectual Property Law: Do We Need Common European Principles?

Juridicum, Schottenbastei 10–16, 1010 Wien

6 September 2019

09:00–18:00

AGENDA

Theme

Remedies, such as injunctions, damages, or claims for information, are increasingly of relevance in the policy debates in the intellectual property law. Intellectual property rights are believed to incentivise the creation and dissemination of new technical solutions and help to disclose their workings to the public in exchange for limited exclusivity. Many books and articles have been written about different aspects of the intellectual property system. Surprisingly, however, despite its high practical relevance, the issue of drafting, granting and enforcing remedies remains less clear in comparative legal literature. This is in stark contrast with their policy relevance. Remedies are increasingly becoming important policy levers when adjusting the intellectual property system to quickly changing industries and business practices.

This Intellectual Property Law Special Interest Group's (IP Law SIG) panel aims at giving the IP Law SIG visibility: involving academics, judges and other experts, thereby attracting publicity and new members; starting a tradition of in-depth scholarly exchange at IP SIG events; and, potentially, launching a pan-European project on remedies in European intellectual property law, as a flagship initiative for the coming years.

Inspired by a project initiated in 2017 by Martin Husovec and Jorge Contreras, this event follows up on a workshop organised at Tilburg University, which took place in June 2018. The workshop – entitled *Mapping Flexibilities for Injunctive Relief in Patent Law: What Can the Member States of the European Union and the United States Learn From Each Other?* – aimed at creating a platform for a structured discussion about the flexibility and tailoring of injunctive relief in patent law. Given the success of the workshop, the participants decided to commit their time to a book project (forthcoming with the Cambridge University Press) which should further deepen the discussion. At the Vienna event, some of the authors will present their preliminary findings. This debate will at the same time be used as a starting point for a broader debate about remedies in European IP law in order to answer the question whether a common set of principles would be a way forward for European harmonisation.

Programme

- 09:00–09:10 **Welcoming Remarks** (Dr Husovec, Dr Myska, Prof Contreras [remote])
- 09:10–10:40 **Could Principles for Intellectual Property Rights (IPR) Remedies be Useful?**
- This session will ask panelists to reflect on following questions (5–7 minutes each): (1) Do you think that developing the common principles for the IP remedies could be a useful exercise? Why? (2) Do you think the principles could improve adjudication of IP rights in practice? How? (3) What other benefits could such principles bring? Do we have some precedents? (4) Should these principles be regional or international?
- Chair: Dr Husovec
- Panelists: Prof Fischman-Afori, Prof Golden, Prof Hoyng, Prof Siebrasse, Prof Sikorski, Prof Strowel
- 10:45–11:10 *Coffee Break*
- 11:15–12:40 **Do We Need Common European Principles for IPR Remedies?**
- This session will ask panelists to reflect on following questions (5–7 minutes each): (1) Should these principles be horizontal across all IP rights? Why yes/not? Does different justification of rights matter? (2) How much should the principles be based on the existing national law/practice (and EU law) and how much should they try to go beyond? (3) How would you suggest to organise the work related to the development of such principles? (4) Do you think that splitting the work-streams into injunctions, damages, unjust enrichment would be too broad or narrow? (5) Who – in terms of expertise & persons – should be in charge of drafting sections of such principles? Why?
- Chair: Dr Myska
- Panelists: Prof Cogo, Prof Gislard, Prof Hofmann, Prof Picht [remote], Prof Targosz, Prof Wiebe



12:45–13:55

Lunch

14:00–15:40

Book Discussion: National Chapters & Synthesis

The session will be dedicated to the discussion of national chapters and the first draft of the synthesis report for the book 'Injunctions in Patent Law: Trans-Atlantic Dialogues on Flexibility and Tailoring' (CUP 2020, forthcoming). Each national chapter will present 5 minutes of highlights, followed by an open debate of the common findings. The drafts will be circulated with the participants before the event.

Chair: Prof Contreras [remote], Dr Husovec

Panelists: Prof Cogo, Prof Fischman-Afori, Prof Gislard, Prof Golden, Prof Hoyng, Prof Picht [remote], Prof Siebrasse, Prof Sikorski, Prof Targosz

15:45–15:55

Break

16:00–17:40

Workshop on Injunctive Relief: Contrasting Approaches

Following upon the book project debate, the participants will discuss solutions to five brief case studies, and how application of IPR principles on remedies, in this case injunctions, could help in resolving them.

Chair: Ms van Dongen

Speakers: all SIG participants

17:40–18:00

Conclusions

Dr Husovec, Dr Myska