



European Patent Law

Towards a Uniform Interpretation



S. Luginbuehl 03

Stefan Luginbuehl



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Stefan Luginbuehl

PhD, Lawyer, European Patent Office, Germany



Edward Elgar

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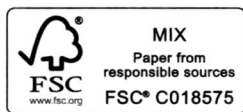
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Dedicated to Susi and Walo Luginbühl

Preface

There are two regional instruments which exist at the European level dealing with the jurisdiction, recognition and enforcement of judgments in civil and commercial matters:

- The Council Regulation (EC) No. 44/2001, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 22 December 2000 (Regulation 44/2001; Reg 44) which replaced the EEC Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 (Brussels Convention), and
- The EC-EFTA Convention on Jurisdiction and the Enforcements of Judgments in Civil and Commercial Matters of 16 September 1988 (Lugano Convention; LC).

On 1 July 2007, the agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 20 September 2005 entered into force. The Brussels Convention, which had only been binding and applicable between the EU member states and Denmark since Regulation 44/2001 entered into force, was thereby replaced with this agreement. Under this agreement, the provisions of Regulation 44/2001, which are of importance for this thesis, became likewise applicable to the territory of Denmark. Consequently, the definition of Regulation 44/2001 as used in the study also includes Denmark in its scope of applicability.

On 30 October 2007, a revised version of the Lugano Convention was signed in Lugano, Switzerland, in order to bring it into line with Regulation 44/2001. The European Community ratified the revised convention on 18 May 2009 with effect for all its member states with the exception of Denmark. Norway ratified the revised Lugano Convention on 1 July 2009 and Denmark followed on 24 September 2009. The revised Lugano Convention entered into force between the European Community and Norway, as well as between Denmark and Norway on 1 January 2010. Switzerland ratified the Convention with effect from 1 January 2011. The ratification of Iceland is still outstanding. References to the Lugano Convention in this book refer to the revised version.

In order to avoid lengthy references to the relevant sources highlighted in the footnotes, the bibliography includes full details of all those articles or books quoted more than once in the study.

The present work takes into account developments until 1 November 2010. Any views expressed in this book are those of the author and do not necessarily reflect the views of the European Patent Office.

Acknowledgments

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But without Sue, my wife, all this would not have been possible: 谢谢.

Abbreviations and acronyms

A.C.	Appeal Case
a.d.	anno domini
ADR	Alternative Dispute Resolution
AIPLA	American Intellectual Property Law Association < www.aipla.org >
ALI	The American Law Institute < www.ali.org >
Art./Arts.	Article / Articles
AT	Country code for: Austria
BE	Country code for: Belgium
BGE	Entscheid des schweizerischen Bundesgerichts: Decision of the Swiss Federal Supreme Court
Brussels Convention	EEC – Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968
BNA	Bureau of National Affairs (USA)
CCPR	International Covenant on Civil and Political Rights of 16 December 1966
CEIPI	Centre d'études internationales de la propriété industrielle < www.ceipi.edu >
CH	Country code for: Switzerland (Confoederatio Helvetica)
CJEU	Court of Justice of the European Union < curia.europa.eu/ >
COPAC	Common Appeal Court on the basis of the Community Patent Convention
CP Protocol on Litigation	Protocol on the Settlement of Litigation Concerning the Infringement and Validity of Community Patents, 1989 O.J. EC , L 401, 34–44
CP Green Paper	Green Paper on the Community patent and the patent system in Europe of 24.6.1997, COM(97) 314 final
CP Regulation proposal (2000)	Proposal for a Council Regulation on the Community patent of 1.8.2000, COM(2000) 412 final

CP Court jurisdiction	Proposal for a Council Decision conferring jurisdiction on the Court of Justice in disputes relating to the Community patent of 23.12.2003, COM(2003) 827 final
CP Court proposal	Proposal for a Council Decision establishing the Community Patent Court and concerning appeals before the Court of First Instance of 23.12.2003, COM(2003) 828 final
CPC	Community Patent Convention, 1989 <i>O.J. EC</i> , L 401, 9–27
DE	Country code for: Germany (Deutschland)
draft EEUPCA	Draft Agreement on the European and Community Patents Court and draft Statute; EU council document No. 7928/09, PI 23
draft EPLA	Draft Agreement on the establishment of a European patent litigation system (WPL/10/05)
draft HJC	Preliminary Draft for a Hague Jurisdiction Convention
draft Statute	Draft Statute of the European Patent Court (WPL/SUB 8/05)
draft Statute of the EEUPC	Draft Agreement on the European and Community Patents Court and draft Statute; EU council document No. 7928/09, PI 23
e.g.	exempli gratia: for instance
EC	European Community
EC Treaty	Treaty establishing the European Community
EEC	European Economic Community
ECtHR	European Court of Human Rights < www.echr.coe.int/echr/ >
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms of 4.11.1950
ECJ	European Court of Justice, now called ‘Court of Justice of the European Union (CJEU)’ < curia.europa.eu/ >
ECJ Court of First Instance	The Court of First Instance of the European Communities, now called ‘General Court’ of the Court of Justice of the European Union
EFTA	European Free Trade Association < www.efta.int/ >
ed.	Editor / edition
eds.	Editors

EEUPC	European and EU Patents Court
EEUPCA	European and EU Patents Court Agreement (Draft Agreement on the European and Community Patents Court and draft Statute; EU Council document No. 7928/09, PI 23)
Enforcement Directive	Directive of the European Parliament and of the Council No. 48/2004 on the enforcement of intellectual property rights of 29.4.2004
EPC	Convention on the grant of European patents (European Patent Convention) of 5.10.1973, last revised on 29.11.2000
epi	European Patent Institute – Institute of Professional Representatives before the European Patent Office < www.patentepi.com >
EPJ	European Patent Judiciary
EPLA	European Patent Litigation Agreement
EPLAW	European Patent Lawyers Association < www.eplaw.org/ >, see also < www.eplawpatentblog.com/ >
EPLP	European Patent Litigation Protocol (initial terminology for the EPLA)
EPO	European Patent Office < www.epo.org/ >
ES	Country code for: Spain (España)
et al.	et alii: and others
et seq.	et sequens: and following
EU	European Union < europa.eu/ >
EU Council	Council of the European Union
EU Treaty	Treaty on European Union
European Patent Convention	See EPC
EWCA civ	England and Wales Court of Appeal (Civil Division)
EWHC	High Court of England and Wales
Fed. Cir.	US Court of Appeals for the Federal Circuit
fig.	figure
FR	Country code for: France
G ../..	Decision of the EPO Enlarged Board of Appeal
HJC	Hague Jurisdiction Convention; Project of the Hague Conference on Private International Law for a world-wide agreement on Jurisdiction and Foreign Judgments in Civil and Commercial matters

IBA	International Bar Association <www.ibanet.org>
ibid.	ibidem: in the same book or in the same decision
id.	idem: the same author
i.e.	id est: that is or that is to say
ILA	The International Law Association <www.ila-hq.org>
INPI	Institut national de la propriété industrielle: French national institute of industrial property <www.inpi.fr>
IP	Intellectual property
IPO	Intellectual Property Office
IPR	Intellectual property rights
IT	Country code for: Italy
Lisbon Treaty	Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community of 13.12.2007
LU	Country code for: Luxembourg
Lugano Convention	EC-EFTA Convention on Jurisdiction and the Enforcements of Judgments in Civil and Commercial Matters of 16.9.1988
MEP	Member of the European Parliament
n.	Footnote
N	Note
N.D. Ill.	US District Court Northern District of Illinois
NL	Country code for: the Netherlands
No.	Number
Paris Convention	Paris Convention for the Protection of Industrial Property of 20.3.1883
Reg 44/LC	Regulation 44/2001, Lugano Convention
Regulation 44/2001	Council Regulation (EC) No. 44/2001, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 22.12.2000.
Rep.	Reports
Rome II proposal	Proposal for a Regulation of the European Parliament and Council on the law applicable to non-contractual obligations, ('Rome II') of 22.7.2003, COM(2003) 427 final
Rome II Regulation	European Parliament and Council Regulation (EC) No. 864/2007, on the law applicable to non- contractual obligations ('Rome II') of 11.7.2007
SCP	WIPO Standing Committee on the Law of Patents

Sec.	Section
Ser/ser.	Serie
SME	Small- and medium-sized enterprise
Strasbourg Convention	Convention on the Unification of Certain Points of Substantive Law on Patents for Invention of 27.11.1963
SUB	WPL sub-group
TFEU	Treaty on the Functioning of the European Union
TRIPs Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods of 5.4.1994
Vienna Convention	Vienna Convention on the Law of Treaties of 25.3.1969
VPP	Vereinigung von Fachleuten auf dem Gebiet des gewerblichen Rechtsschutzes < www.vpp-patent.de >
UK	County code for: United Kingdom
UN	United Nations
US	County code for: United States of America
USA	United States of America
vol.	Volume
WIPO	World Intellectual Property Organisation < www.wipo.int/portal/index.html.en >
WPL	Working Party on Litigation as mandated by the EPC contracting states
WTO	World Trade Organisation < www.wto.org >

Abbreviations and acronyms of books, documents and periodicals

AIPLA Q.J.	AIPLA Quarterly Journal (USA)
AJIL	American Journal of International Law (USA)
AJP	Aktuelle Juristische Praxis (CH)
All E.R.	All England Law Reports (UK)
AM.J.COMP.L.	The American Journal of Comparative Law (USA)
BIE	Bijblad bij de Industriële Eigendom (NL)
CA/ . .	Document of the Administrative Council of the European Patent Organisation
CA/PL . . .	Document of the Committee on Patent Law of the European Patent Organisation
CASE W. RES. J.	Case Western Reserve Journal of International Law (USA)
INT'L LAW	
C.L.J.	Cambridge Law Journal (UK)
CML REV.	Common Market Law Review (NL)
ECR	European Court Reports (EU)
E.L.J.	European Law Journal (IT/FR/UK)
E.L.R.	European Law Reporter (LU/CH)
E.L.REV.	European Law Review (UK)
EIPR	European Intellectual Property Review (UK)
EuZ	Zeitschrift für Europarecht (CH)
EuZW	Europäische Zeitschrift für Wirtschaftsrecht (DE)
F.2d	Federal Reporter (2nd ser.; USA)
F. Supp.	Federal Reporter, Supplement (USA)
F.S.R.	Fleet Street Reports (UK)
GRUR	Gewerblicher Rechtsschutz und Urheberrecht (DE)
GRUR INT.	Gewerblicher Rechtsschutz und Urheberrecht Internationaler Teil (DE)
H.L. Cas.	Clark's House of Lords Cases 1847–1866 (UK)
HARV.INT'L.L.J.	Harvard International Law Journal (USA)
HARV.L.R.	Harvard Law Review (USA)

ICLQ	International and Comparative Law Quarterly (UK)
IIC	International Review of Industrial Property and Copyright Law (DE)
I.L.Pr.	International Litigation Procedure (UK)
ICIP-ING.CON.S.	L'Ingenieur Conseil – Intellectual Property (BE)
IPQ	Intellectual Property Quarterly (UK)
IPRax	Praxis des Internationalen Privat- und Verfahrensrechts (DE)
J.D.I.	Journal du Droit International (FR)
JIPLP	Journal of Intellectual Property Law & Practice (UK)
JWIP	The Journal of World Intellectual Property (CH/UK)
JZ	Juristen-Zeitung (DE)
LQR	The Law Quarterly Review (UK)
Mitt.	Mitteilungen der deutschen Patentanwälte (DE)
NJ	Nederlandse Jurisprudentie (NL)
NJW	Neue Juristische Wochenschrift (DE)
ÖBl	Österreichische Blätter für gewerblichen Rechtsschutz und Urheberrecht (AT)
O.J. EPO	Official Journal of the European Patent Office (EPO)
O.J. EC	Official Journal of the European Community (EC)
O.J. EU	Official Journal of the European Union (EU)
P.I.P.D.	Propriété Industrielle Bulletin Documentaire (FR)
p.i.	Propriétés intellectuelles (FR)
propr. industr.	Propriété industrielle (FR)
RABELSZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht (DE)
R.D.P.I.	Revue du Droit de la Propriété Intellectuelle (FR)
RIW	Recht der Internationalen Wirtschaft (DE)
RPC	Reports on Patent, Design and Trademark cases (UK)
RLDA	Revue Lamy, Droit des affaires (FR)
SJZ	Schweizerische Juristenzeitung (CH)
SMI	Schweizerische Mitteilungen über Immaterialgüterrecht (CH)

sic!	Zeitschrift für Immaterialgüter-, Informations- und Wettbewerbsrecht (CH)
U.Pa.L.Rev.	University of Pennsylvania Law Review (USA)
U.S.P.Q.	United States Patent Law Quarterly (USA)
VA.J.INT'L.L.	Virginia Journal of International Law (USA)
VAND.J.TRANSNAT'L.L.	Vanderbilt Journal of Transnational Law (USA)
VPP-Rundbrief	Rundbrief der Vereinigung von Fachleuten auf dem Gebiet des gewerblichen Rechtsschutzes (DE)
WASH.U.J.L. & POL'Y.	Washington University Journal of Law & Policy (USA)
WIPO/ACE/ . . .	Document of the WIPO Advisory Committee on Enforcement
WPL/././..	Document of the Working Party on Litigation (European Patent Organisation)
WPL/SUB ././..	Document of the Sub-group of the Working Party on Litigation (European Patent Organisation)
WIPR	World Intellectual Property Report (USA/UK)
Y.B.E.L.	Yearbook of European Law (UK)
ZBJV	Zeitschrift des Bernischen Juristenvereins (CH)
ZEuP	Zeitschrift für europäisches Privatrecht (DE)
ZfRV	Zeitschrift für Rechtsvergleichung (AT)
ZSR	Zeitschrift für schweizerisches Recht (CH)
ZZP	Zeitschrift für Zivilprozess (DE)
ZZPInt	Zeitschrift für Zivilprozess International (DE)