

KLUWER LAW INTERNATIONAL

INTERNATIONAL  
LITIGATION IN  
INTELLECTUAL  
PROPERTY AND  
INFORMATION  
TECHNOLOGY

ARNAUD NUYTS (ED.)



Wolters Kluwer

Law & Business

D950.3  
I 61

KLUWER LAW INTERNATIONAL

European Commission Research Project on Judicial Cooperation  
in Matters of Intellectual Property and Information Technology

# International Litigation in Intellectual Property and Information Technology

## Editor

Arnaud Nuyts

## Co-Editors

Nikitas Hatzimihail  
Katarzyna Szychowska

## Other Contributors

Jean-Sylvestre Bergé  
Alegria Borrás  
Anna Gardella  
Richard Fentiman  
Joaquim J. Forner Delaigua  
Cristina Gonzalez Beilfuss  
Burkhard Hess  
Maksymilian Pazdan  
Marta Pertegás  
Maciej Szpunar  
Paul L.C. Torremans



E2010001050



Wolters Kluwer

Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

*Published by:*

Kluwer Law International,  
P.O. Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
E-mail: [sales@kluwerlaw.com](mailto:sales@kluwerlaw.com)  
Website: [<http://www.kluwerlaw.com>](http://www.kluwerlaw.com)

*sold and distributed in North, Central and South America by:*

Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America

*Sold and distributed in all countries by*

Turpin Distribution Services Ltd.  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG1 8 8TQ  
United Kingdom

ISBN: 978-90-411-2702-0

© 2008 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, mechanical, photocopying, recording or otherwise, without prior written permission of the publishers.

Permission to use this content must be obtained from the copyright owner. Please apply to: permission Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011, United States of America. E-mail: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com)

# **International Litigation in Intellectual Property and Information Technology**

## Editors' Note

In our globalized world, the importance and ubiquity of intellectual property seem ever-expanding. Intellectual property rights are global in their operation, but also territorial in their legal nature – a fact recently demonstrated by the European Court of Justice in the *GAT* and *Roche Nederland* cases. With intellectual property a growing subject of cross-border litigation, this tension between ubiquity and territoriality, operation and remedies gives rise to many difficulties and questions.

Such questions include how to determine and organize the applicable procedural framework that guarantees at the same time the effective protection of intellectual property rights and legal certainty. Are foreign intellectual property rights justiciable, and when? Which court has jurisdiction to entertain actions relating to foreign rights and/or infringements perpetrated through the internet? When, if at all, should the court decline to exercise jurisdiction in cross-border intellectual property disputes? Is it still possible to consolidate proceedings relating to parallel IP rights after the decisions of the European Court of Justice in *GAT* and *Roche*? What is the role and scope of preliminary and protective measures in IP international litigation? What means are made available, in cross-border IP cases, for the collection of evidence located abroad? How does collecting evidence interact with soliciting protective measures, and which are the respective relations between the Brussels I regime and the Evidence Regulation? What is the impact of the Intellectual Property Enforcement Directive on the Brussels I regime, and intra-European civil litigation in general? In fact, how do the European Judicial Area instruments interact with one another, and intellectual property instruments in the field of cross-border litigation?

This book promises answers to these questions, and more. It is the outcome of an international research project coordinated by the Unit for Private International Law of the University of Brussels (*Université Libre de Bruxelles*), with the participation of a group of experts coming from initially seven, then eight universities in Europe (Antwerpen, Athens, Barcelona, Cambridge, Cyprus, Heidelberg, Paris X-Nanterre). In the first phase of the project, background research was undertaken by

Ms Katarzyna Szychowska, research fellow at the University of Brussels, leading to the drafting of preliminary papers identifying the issues to be examined in depth and suggesting avenues for further research (those papers are available on line at [www.dipulb.be](http://www.dipulb.be)). In the second phase, the participating experts undertook research on the proposed topics. The group met first in Heidelberg, on 21 October 2006, to participate in a seminar hosted by Professor Burkhard Hess. The project culminated in an international conference held in Brussels on 2 March 2007, where the experts presented the final draft of the papers contained in this volume. Taken together, these papers offer what may appear the most thorough and systematic effort yet to cover the various issues pertaining to European judicial cooperation in matters of intellectual property and information technology.

The research project was made possible and partly financed through the European Commission's Framework Program for Judicial Cooperation in Civil Matters. The general objective of this program is to promote judicial cooperation in civil matters, aiming in particular at improving access to justice, promoting mutual recognition of judicial decisions, advancing the necessary harmonization of legislation, and eliminating obstacles created by the disparities in civil law and procedure. It is our hope that this book constitutes a modest contribution to these objectives.

Brussels, 1 September 2007

# Table of Cases

## I. European Cases

*Besix v. WABAG*, case C-256/00 [2002] ECR I-1699, **6, 45, 46**

*Bier v. Mines de Potasse d'Alsace*, case 21/76 [1976] ECR 1735, **8, 37, 39, 115-120, 124, 127, 129, 137, 279, 282**

*Coreck Maritime v. Handelsveem*, case C-387/98 [2000] ECR I-9337, **171, 173, 174**

*De Cavel v. De Cavel*, case 143/78 [1979] ECR 1055, **222, 234**

*Denilauler v. Couchet Frères*, case 125/79 [1980] ECR 1553, **212, 222, 223, 225, 284, 285**

*Duijnste v. Lodewijk Goderbauer*, case 288/82 [1983] ECR 3663, **7, 63, 64, 68, 75, 185, 209, 216**

*Dumez v. Hessische Landesbank*, case C-220/88 [1990] ECR I-49, **118, 119, 121, 122, 147**

*ERTA*, case 22/70 [1971] ECR 264, **241**

*Freeport plc v. Olle Arnoldsen*, case C-98/06, Opinion of Advocate-General Mengozzi delivered on 24 May 2007, **85**

*Gasser v. MISAT*, case C-116/02 [2003] ECR I-14693, **9, 25, 26, 73, 108, 109, 114, 189**

*GAT v. LuK*, case C-4/03 [2006] ECR I-6509, **3, 22, 27, 28, 61-74, 76, 84, 86, 87, 89, 96, 103, 105, 107-109, 159, 173, 181, 185, 187, 190, 192, 193, 208, 216, 251, 276-278, 281, 282**

*Gubisch v. Palumbo*, case 144/86 [1987] ECR 4861, **9, 20, 152, 202**

*Hagen v. Zeehaghe*, case C-365/88 [1990] ECR I-1845, **36, 205**

*Henkel*, case C-167/00 [2002] ECR I-8111, **8, 23, 43, 111, 126, 143, 144, 199**

*Hermès International v. FHT Marketing Choinie BV*, case C-53/96 [1998] ECR I-3603, **209**

*Hoffmann v. Krieg*, case 145/86, [1988] ECR 645, **81**

- Kalfelis v. Schroeder*, case 89/87 [1988] ECR 5565, **13, 15, 18, 19, 31, 80, 86, 107, 110, 113, 143, 198, 200, 280**
- Kronhofer v. Maier*, case C-168/02, [2004] ECR I-6009, **116, 123**
- Leathertex v. Bodetex*, case 420/97 [1999] ECR I-6747, **206**
- Lugano Opinion*, 1/03 [2006] ECR I-1145, **247**
- Marinari v. Lloyd's*, case C-364/94 [1995] ECR I-2719, **121, 122, 146, 147, 149**
- Mietz c. Intership Yachting Sneek*, case C-99/96 [1999] ECR I-2277, **210, 213, 221, 222, 269, 271, 272, 283, 285, 286**
- Open Skies, Commission v. Denmark*, case C-467/98, [2002] ECR I-9855, **242, 252**
- Overseas Union Insurance v. New Hampshire Insurance Company*, C-351/89 [1991] ECR I-3317, **20, 108, 202, 233, 248**
- Owusu v. Jackson*, case C-281/02 [2005] ECR I-1383, **6, 164, 165, 168, 169, 171, 173-176, 178, 239, 244**
- Parfums Christian Dior SA v. TUK Consultancy BV and Assco Gerüste GmbH and Rob van Dijk v. Wilhelm Layher GmbH & Co. KG et Layher BV*, joined cases C-300/98 and C-392/98 [2000] ECR I-11307, **13, 209**
- RAS v. West Tankers*, case 185/07, pending, **190**
- Rechnungshof v. Österreichischer Rundfunk and Others*, joined cases C-465/00, C-138/01 and C-139/01 [2003] ECR 4989, **244**
- Reichert v. Dresdner Bank*, case C-261/90 [1992] ECR I-2149, **210, 222, 286, 295**
- Renault v. Maxicar*, case C-38/98 [2000] ECR I-2973, **11, 16**
- Réunion européenne v. Spliethoff's*, case C-51/97 [1998] ECR I-6511, **80, 116, 117, 119, 121, 122, 124, 140, 146, 280**
- Roche Nederland v. Primus*, case C-539/03 [2006] ECR I-6535, **3, 23, 26, 29-33, 37, 38, 63-70, 73, 79-81, 83-89, 96-97, 100, 101, 129, 155, 167, 181, 183, 185, 192, 193, 195, 206, 208, 210, 215, 217-221, 235, 251, 260, 272, 273, 276-282**
- Schieving-Nijstad vof e.a. v. Robert Groeneveld*, case C-89/99 [2001] ECR I-5851, **13, 209**
- Shevill v. Presse Alliance*, case C-668/93 [1995] ECR I-415, **11, 37, 40, 107, 111, 114, 116-120, 122, 124, 125, 127-130, 137-142, 147-149**
- Somafer v. Saar-Ferngas*, case 33/78 [1978] ECR 2183, **138**
- St. Paul Dairy Industries v. Unibel Exser*, case C-104/03 [2005] ECR I-3841, **112, 268-271, 294, 297, 298**
- Tacconi v. HWS*, case C-334/00 [2002] ECR I-7357, **200**
- Tatry (The)*, case C-406/92 [1994] ECR I-5439, **9, 20, 21, 81, 114, 202, 203**
- Tedesco v. Tomasoni Fittings*, case C-175/06, Opinion AG Kokott dated 7/18/2007, unpublished, **294, 296-298**
- Torline*, case C-18/02 [2004] ECR I-1417, **111, 116-120, 123, 124**
- Turner v. Grovit*, case C-159/02 [2004] ECR I-3565, **73, 189, 227**



*Van Uden Maritime c. Firma Deco-Line e.a.*, case C-391/95 [1998] ECR I-7091, **24, 210, 211, 213, 214, 218, 221-226, 228-230, 233, 235, 268, 269, 271, 272, 283, 295**

## II. National Cases (with published names of parties)

*Abkco Music & Records v. Jodorowski*, (HC Ch.Div.) 21 February 2002 (Case No. CH/2001/PTA/837), **38**

*Ace Insurance Ltd. v. Zurich Insurance Co.* [2001] Lloyd's Rep. 504 (CA), **156**

*Akzo v. Webster*, The Hague District Court, 23 December 1997, **18, 85**

*Alligator Bioscience AB v. Maxygen*, Swedish Supreme Court on 2 June, 2006, (case N.Ö 2773-05, in NJA 2006, 354), **197**

*Altana Pharma c. Europharma Laboratorios*, President of Brussels District Court, 25 mars 2005, **12, 226, 227, 230**

*Arkwright Mutual Insurance Co. v. Bryanston Insurance Co. Ltd.* [1990] 2 QB 649, **175**

*AT&T Corp. v. Microsoft Corp.*, 414 F.3d 1366 (Fed. Cir. 2005), **91, 92**

*Bard v. Medica*, President of the District Court of The Hague, 3 May 1995, **14, 97**

*Bettacare Ltd. v. H3 Products B.V. en Wedeka*, The Hague District Court, 21 September 2006, **30, 215, 217**

*Boosey & Hawkes Music Ltd. v. Disney*, 934 F. Supp. 119 (1996), **155, 159, 163**

*British Aerospace Plc v. Dee Howard Co.* [1993] 1 Lloyd's Rep. 405, **162**

*British South Africa Co. v. Companhia de Moçambique* [1893] AC 602, **36, 160, 167**

*Bruno v. Soc. Citibank*, Court d'appel de Versailles, 1991, **174**

*Calder v. Jones*, 465 U.S. 787 (1984), **44**

*Calzificio Franzoni v. Steps Holding*, Brussels Tribunal de Première Instance, 12 December 2003, **215**

*Castellblanch v. Roederer*, French *Cour de Cassation*, 9 December 2003, **40, 42, 120, 124, 128, 144**

*Celltech R&D Ltd. v. Medimmune Inc.* [2004] EWCA, Civ. 1331, **157, 161-164, 168, 169, 176**

*Chiron Corp. v. Akzo Pharma Organon Technika UBI*, The Hague District Court, 22 July 1994, **12**

*Coin Controls Ltd. v. Suzo International (UK) Ltd. and Others*, [1997] 3 All ER 45 (UK), **14, 15, 27, 67, 155, 157, 177, 185, 220, 221**

*Colgate v. Unilever*, President of Brussels District Court, 14 June 2001, **12, 213, 231**

*Comap v. Korver Kompagnie*, The Hague District Court, 15 November 2006, **29, 215**

*Connaugh v. Smithkline Beecham*, Düsseldorf District Court, 27 February 1998, **189**

- Connaugh v. Smithkline Beecham*, The Hague District Court, 29 April 1998, 21, **189**
- Conor Medsystems Inc. v. Angiotech Pharmaceuticals Inc.*, Court of Appeal, 16 January 2007, **60, 71**
- Cordis v. Boston Scientific*, President of the District Court of The Hague, 2 December 1997, **14**
- Cordis v. Cadsand Medica*, President of the District Court of The Hague, 22 December 1994, **14**
- Cristal (Sté Castellblanch v. Sté Champagne Louis Roederer)*, Cass. France, 9 December 2003, p. 632, **40, 42, 120, 124, 128, 144**
- Dade v. Chiron*, Court of Milan, 21 March 2002, **22**
- Def Lepp Music v. Stuart-Brown* [1986] RPC 273, **36, 160**
- Dendron GmbH v. The Regents of the University of California* [2004] I.L.Pr. 35, **290**
- El du Pont de Nemours & Co. v. Agnew* [1987] 2 Lloyd's Rep. 585 (CA), **152, 163**
- EKA v. Nako*, The Hague Court of Appeal, 25 May 2000, **14**
- Eolas Techs. v. Microsoft Corp.*, 399 F.3d 1325 (Fed. Cir. 2005), **92**
- Epic v. Nellcor*, President of Brussels District Court, 22 September 2000, **24, 73, 225, 226, 231**
- Epoux Wegmann v. Elsevier Science Ltd*, French *Cour de Cassation*, 16 July 1997, **37, 119, 128**
- Eurogenerics et Ratiopharm Belgium NV v. H. Lundbeck et Lundbeck Belgium NV*, President of Brussels First Instance Court, 8 October 2003, **210**
- Eurosensory v. Teimann & Blind Equipment* January 28, 1994, **16**
- Expandable Grafts Partnership and Others v. Boston Scientific Bv and Others*, [1999] F.S.R. 352, **83**
- Expandable Grafts, Ethicon & Cordis Europe v. Boston Scientific*, The Hague Court of Appeal, 23 April 1998, **19, 225**
- Fernand S., Normalu v. Acet*, Paris Court of Appeal, April 26, 2006, **44, 124**
- FKI Engineering Ltd. and FKI plc v. Dewind Holdings Ltd. and Dewind GmbH* (Steel J. 25 January 2007), **68**
- Flesstop*, The Hague District Court, 21 February 1990, **12**
- Fort Dodge Animal Health et al. v. AKZO Nobel*, [1998] F.S.R. 222, **6, 37, 67, 82, 108, 109, 185**
- General Hospital v. Bracco and Byk Gulden*, Düsseldorf District Court, 8 July 1999, **189**
- Griggs Group Ltd. v. Ross Evans, Raben Footwear Pty Ltd e.a.* [2004] EWCH 1088 (Ch), **37, 154, 156**
- HSM Schuhmarketing GmbH v. GEP Industrie*, Court of Appeal of Angers, 9 March 2004, **144**
- Hugo Boss*, French *Cour de Cassation*, January 11, 2005, **43**
- Interlas, Hoge Raad*, 24 November 1989, **10-12, 215**

- ITSI Productions Inc. v. California Authority of Racing Fairs*, 785 F. Supp. 854 (1992), **155**
- James Burrough Distillers Plc v. Speymalt Whisky Distributors Ltd*, (OH), [1991] R.P.C. 130, **11**
- Jolies Céramiques sans kaolin (Les) v. Sté Mridul Entreprises*, Court of appeal of Orléans, 6 May 2003, **144**
- Konkola Copper Mines Plc v. Coromin* [2005] EWHC 896 (Comm), **172-177**
- L.A. Gear Inc. c. Gerald Whelan & Sons* [1991] F.S.R. 670, **6, 11**
- La Martiniquaise v. Companhia Geral*, Paris Court of Appeal, 17 October 1990, **5**
- Liberty-voyages.com*, Brussels Court of Appeal, 2 December 2004, **43**
- London Film Productions Ltd. v. Intercontinental Communications Inc.*, 580 F. Supp. 47 (1984), **155, 159**
- Macchine Automatiche v. Windmoller & Holscher KG, Corte Suprema di Cassazione*, December 12, 2003, **23, 73, 113, 195, 200, 201**
- Mars Inc. v. Kabushiki-Kaisha Nippon Conlux*, 24 F.3d 1368 (Fed. Cir. 1994), **91, 94**
- Medinol v. Johnson & Johnson*, President of Brussels District Court, 24 October 2004, **19**
- Medtronic v. Therex*, President of Brussels First Instance Court, 7 June 2000, **225, 231**
- Microsoft Corp. v. AT&T Corp.*, 127 S. Ct. 1746, US 2007, **92**
- Mölnlycke AB v. Procter & Gamble Ltd.* (No. 4), Court of Appeals [1992] R.P.C., **11**
- Murray v. BBC*, 906 F. Supp. 858 (1995), **155, 159**
- Novamont v. Biotec*, District Court of Novara, 20 April 2000, **21, 22**
- NTP v. Research in Motion (RIM)*, 270 F. Supp. 2d 751 (E.D. Va. 2003); 418 F.3d 1282 (Fed. Cir. 2005), **91**
- Optigen v. Marchion*, Milan Court of Appeal, 2 March 2004, **24, 113, 188**
- Ortman v. Stanray*, 371 F.2d 154 (7th Cir. 1967), **91**
- PayLine*, Nanterre District Court, 17 September 1997, **40**
- Pearce v. Ove Arup Limited e.a.*, [1997] Court of Appeals WLR 779, **11, 14, 35, 36, 81, 82, 153-155, 160, 165-169, 177, 215**
- Philips Electronic N.V. v. Postech Co. and Princo, Hoge Raad*, 19 March 2004, **12, 232**
- Philips v. Hemogram*, The Hague District Court, 30 December 1991, **12**
- Plastus Kreativ AB v. Minnesota Mining & Manufacturing Co.* [1995] RPC 438, **11, 91, 155, 157, 161, 163**
- Potter v. Broken Hill Proprietary Co.* (1906) 3 CLR 479, **91, 115, 161, 163**
- Praxair v. ATMI*, Antwerp Court of Appeal, 25 April 2007, **13, 30**
- R. Griggs Group Ltd. v. Evans* [2005] Ch. 153, **154, 155, 157, 158, 160, 161, 167, 168, 177**
- Re Harrods (Buenos Aires) Ltd.* [1992] Ch. 72 (CA), **168**
- Red Sea Insurance C. Ltd. v. Bouygues SA* [1995] 1 AC 190 (PC), **160**

- Resilux NV c. Schmalbach-Lubeca Pet Containers Belgium N.V.*, Brussels Court of Appeal, 18 October 1999, **12, 30, 217**
- Roche Groupe v. Glaxo Wellcome Group*, President of Brussels First Instance Court, 18 October 1999, **210**
- Roche NV e.a. v. Wellcome Foundation Ltd*, Court of Appeal of Brussels, 20 February 2001, **23, 73**
- Röhm Enzyme v. DSM Basf*, Brussels District Court, 12 May 2000, **22**
- S.C.M. GmbH v. GF-WD. GmbH and e.AWK sp. z o.o. e.a.*, Polish Supreme Court (Sąd Najwyższy), 6 April 2001, **230**
- SanDisk Corporation v. Philips and others*, [2007] EWHC 332 (Ch), **102**
- Sayer e.a. v. SKB e.a.*, High Court of London (4 April 2004 – unreported), **294**
- Schaerer Schweiter Mettler A.G. v. Fadis SpA*, Paris District Court, 9 March 2001, **22**
- Scimed v. Guidant*, The Hague District Court, 31 March 1999, **14**
- Sepracor Inc. v. Hoechst Marion Roussel Limited e.a.*, High Court – Patent Court [1999] FSR 746, **17, 97**
- Siskina (Owners of Cargo Lately Laden on Board) e.a. v. Distos Compania Naviera S.A* [1977] 3 (HL) W.L.R. 818, **232**
- Steps Holding v. Franzoni*, President of Brussels First Instance Court, 7 April 2003, **225**
- Sython v. SKB*, President of Brussels First Instance Court, 30 July 2001, **19**
- The Abidin Daver* [1984] AC 398 (HL), **152**
- The Spiliada* [1987] AC 460 (HL), **152**
- Tyburn Productions Ltd. v. Conan Doyle* [1991] Ch. 75, **154, 155, 157, 158, 160, 167, 177**
- Unilever v. Nestle*, President of the District Court of The Hague, 26 May 1997, **14**
- Usines de Melle v. Evence Coppé*, French *Cour de Cassation*, 21 January 1936, **5**
- Voda v. Cordis Corp.*, 476 F.3d 887, C.A Fed. (Okla) 2007, **32, 92, 94-96, 98, 100, 181, 307**
- Voerderhek*, The Hague District Court, 28 August 1990, **12**
- Wallot and Kruger v. Georges et Fortunesco*, Liège Court of Appeal, 30 January 1909, **6, 307**
- Wavin c. Pipe Liners*, The Hague Court of Appeal, 16 January 1992, **12, 14**
- Yahoo!* (UEJF and Licra v. Yahoo! Inc. and Yahoo France), interim order of the Tribunal de grande instance of Paris, 20 November 2000, **136, 148**
- Yema v. Jenny e.a.* Paris District Court, 4 May 1971, **4**
- Young v. New Heaven Advocate*, 315 F. 3d 256 (4th Cir. 2002), *certiorari denied*, **44**
- Zippo Manufacturing Co. v. Zippo Dot Com, Inc.* U.S. District Court of Pennsylvania, 952 F. Supp 119, **45, 146**

### III. National Cases (without names of parties)

- 30 January 1909, Liège, *Pasicrisie*, 1909, II, 175, **6, 307**
- 25 March 1966, Court of Appeal Düsseldorf, [1968] *Gewerblicher Rechtsschutz und Urheberrecht. Internationaler Teil*, **100, 97**
- 27 October 1966, District Court Düsseldorf, [1968] *Gewerblicher Rechtsschutz und Urheberrecht. Internationaler Teil*, **101, 97**
- 19 mars 1987, Court of Appeal of Paris [1987] D.-IR 107, **293**
- 8 August 1989, n. 3657, Corte di Cassazione, S.U., [1990] Riv. dir. int. priv. proc. **685, 197**
- 13 February 1991, District court of Lodi [1992] Riv. dir. int. priv. proc. 332, **197**
- 10 mars 1992, Cass. Belgium, Com. [1993] J.D.I. p. 156, **293**
- 13 February 1993, Corte di Cassazione, S.U., n. 1821 [1994] Riv. dir. int. priv. proc. 358, **197**
- 16 January 1996, District Court (Landgericht) of Düsseldorf, (4 O 5/59), 12, 14 22  
September 1998, District Court of Bologna, [2000] *Responsabilità e Previdenza* 754, **197**
- 9 September 1999, Cass. Belgium, [2000] Rev. Dr. Comm. Belge 130, **293**
- 11 November 1999, District Court of Brescia, [2000] Riv. dir. ind., II, 236, **198, 199**
- 22 December 1999, Court of Appeal of Brussels, [2001] Revue de droit commercial belge 244, **134**
- 14 June 2000, Supreme Court of Sweden case Ö 2095-99 [2001] IIC 231, **24, 113, 196**
- 9 March 2001, District Court of Paris, case No. 00/04 083 [2002] IIC 227, **22, 203**
- 21 February 2003, Swiss Federal Court, [2003] ATF 129 III 295, **205**
- 2 April 2003, case No. 5108, Corte di Cassazione, S.U., [2004] *Corriere giuridico* 210, **203**
- 19 October 2005, District Court of Siracusa, [2006] *Diritto marittimo* 906, **197**
- 8 January 2006, BGH, *Reststoffentfernung*, GRUR 2006, 962, **292**

## Summary Table of Contents

<b>Editors' Note</b>	<b>xv</b>
<b>Table of Cases</b>	<b>xvii</b>
<b>Chapter 1</b> <b>Cross-Border Litigation in IP/IT Matters in the European Union: The Transformation of the Jurisdictional Landscape</b>	<b>1</b>
<i>Arnaud Nuyts, Katarzyna Szychowska and Nikitas Hatzimihail</i>	
<b>Chapter 2</b> <b>The Community Framework for Cross-Border Intellectual Property and Information Technology Litigation</b>	<b>49</b>
<i>Jean-Sylvestre Bergé</i>	
<b>Chapter 3</b> <b>The Widening Reach of Exclusive Jurisdiction: Where Can You Litigate IP Rights after GAT?</b>	<b>61</b>
<i>Paul L.C. Torremans</i>	
<b>Chapter 4</b> <b>Is There Any Web for the Spider? Jurisdiction over Co-defendants after Roche Nederland</b>	<b>79</b>
<i>Cristina Gonzalez Beilfuss</i>	
<b>Chapter 5</b> <b>The Appropriate Venue for Cross-Border Patent Disputes: Heading (Far) West?</b>	<b>89</b>
<i>Marta Pertegás</i>	

<b>Chapter 6</b> <b>Suing At the Place of Infringement: The Application of Article 5(3) of Regulation 44/2001 to IP Matters and Internet Disputes</b> <i>Arnaud Nuyts</i>	<b>105</b>
<b>Chapter 7</b> <b>Cross-Border Litigation of Unfair Competition over the Internet</b> <i>Maksymilian Pazdan and Maciej Szpunar</i>	<b>131</b>
<b>Chapter 8</b> <b>Justiciability, Discretion and Foreign Rights</b> <i>Richard Fentiman</i>	<b>151</b>
<b>Chapter 9</b> <b><i>Torpedoes</i> and Actions for Negative Declarations in International IP Law Litigation</b> <i>Anna Gardella</i>	<b>181</b>
<b>Chapter 10</b> <b>Jurisdiction to Grant Provisional and Protective Measures in Intellectual Property Matters</b> <i>Katarzyna Szychowska</i>	<b>207</b>
<b>Chapter 11</b> <b>Interactions between Community Instruments and International Conventions (Including the Draft New Lugano Convention) in Intellectual Property Matters</b> <i>Alegría Borrás</i>	<b>237</b>
<b>Chapter 12</b> <b>The Impact of the Enforcement Directive on the Brussels I Regime</b> <i>Joaquim J. Forner Delaygua</i>	<b>257</b>
<b>Chapter 13</b> <b>Preservation and Taking of Evidence in Cross-Border Proceedings – Comparative Remarks in the Context of IP Litigation</b> <i>Burkhard Hess</i>	<b>289</b>
<b>Chapter 14</b> <b>Concluding Remarks: Territoriality, International Governance and Cross-Border Litigation of Intellectual Property Claims</b> <i>Nikitas Hatzimihail</i>	<b>303</b>
<b>Index</b>	<b>309</b>

# Table of Contents

<b>Editors' Note</b>	<b>xv</b>
<b>Table of Cases</b>	<b>xvii</b>
<b>Chapter 1</b>	
<b>Cross-Border Litigation in IP/IT Matters in the European Union: The Transformation of the Jurisdictional Landscape</b>	<b>1</b>
<i>Arnaud Nuyts, Katarzyna Szychowska and Nikitas Hatzimihail</i>	
I. Introduction	1
II. From Strict Territoriality to Cross-Border Litigation	4
A. Territoriality of Rights Matched with Territoriality of Procedure	4
B. The Change of Thinking Brought about by the Brussels Convention	6
III. The Cross-Border Litigation Machinery	9
A. How the Machinery Started	9
1. Cross-Border Injunctions	9
2. Jurisdiction over Joint Defendants	13
3. Recognition and Enforcement of Foreign Judgments	16
B. How It Got Blocked and Was Then Fixed	17
1. Abuse of Joinders and Remedies from Domestic Courts	18
2. Pre-emptive Litigation and Remedies from Domestic Courts	20
C. And How It Got Blocked Again	26
1. Stumbling Block: How to Sever the Validity from the Infringement?	26
2. Is There Any Web for the Spider?	30
D. Heading for the Future: Instead of Fixing the Machinery, Setting Up a New One?	33
IV. Copyright Litigation under the Brussels Regime	35
V. Impact of Information Technology on the Litigation of IP Rights under the Brussels Convention/Regulation	39
VI. Conclusion	46



**Chapter 2****The Community Framework for Cross-Border Intellectual Property and Information Technology Litigation****49***Jean-Sylvestre Bergé*

I.	Introduction	49
II.	Yesterday: International Litigation prior to the Development of an EU Framework	50
	A. International Regulations	50
	B. International Litigation Strictly Speaking	51
III.	Today: Changes in International Litigation Due to the Establishment of an EU Framework	52
	A. Establishment of an EU Framework for Intellectual Property Law	52
	B. The Establishment of a Community Framework for Information Technology Law	53
	C. The Establishment of a Community Framework for Private International Law	53
	D. The Changing Face of International Litigation	54
IV.	Tomorrow: What Type of International Litigation and What Type of Community Law Can Be Expected?	55
	APPENDIX	57
I.	International Multilateral Texts Specific to Intellectual Property	57
II.	Community Texts Specific to Intellectual Property	58
III.	Community Texts Specific to Information Technology	59
IV.	Community Texts Specific to International Private Law Containing Provisions Relating to Intellectual Property or Information Technology	59

**Chapter 3****The Widening Reach of Exclusive Jurisdiction: Where Can You Litigate IP Rights after GAT?****61***Paul L.C. Torremans*

I.	Introduction	61
II.	The Judgment	62
	A. A Somewhat Unusual Factual Basis	62
	B. The Case before the German Courts	62
	C. The Court of Justice Goes Back to <i>Duijnstee</i>	63
	D. The Questionable Link with National Offices and National Law	65
	E. Article 22 and Its Position in the Scheme of the Regulation	66
	F. Further Points Raised in Support of Its Approach by the Court of Justice	69
III.	The Position Adopted by the Court	71