

Hungary
Hongrie
Ungarn



Report Q174

in the name of the Hungarian Group
by Dr. Vilmos BACHER (chairman), Dr. Gusztáv BACHER, Dr. Gábor FALUDI,
Dr. István GÖDÖLLE, Dr. Natalie NÁTHON, Dr. András SZECKAY, Dr. Éva SZIGETI

Jurisdiction and applicable law in the case of cross-border infringement (infringing acts) of intellectual property rights

I. The state of applicable law:

1.1.1 Do the domestic Courts assume jurisdiction to decide on infringements of intellectual property rights which are committed abroad?

Law Decree No. 13 of 1979 on Private International Law (PIL) reserves exclusive jurisdiction in industrial property matters only in connection with determining the extent of industrial property rights and the registration and termination of such rights.

According to Section 62/A of the PIL, a Hungarian Court or another Hungarian authority shall have exclusive jurisdiction in proceedings related to registration, extent and termination of industrial property rights in Hungary.

Section 62/C of the PIL provides that a Hungarian Court or another Hungarian authority shall not have jurisdiction in proceedings related to registration, extent and termination of foreign industrial property rights.

In other cases (for example, patent infringement or trademark infringement) the above general jurisdiction rules are applicable.

It could be stated that, in general, no jurisdictional prohibition exists in connection with litigation based on the infringement of a Hungarian patent.

However, the conflict of law rules of the PIL state: "An inventor and his legal successor shall receive protection according to the law of the state and in the state in which the patent was granted or where the application was filed. This provision is applicable respectively in connection with other industrial property rights as well (design, trademark, etc.) (Section 20 of PIL).

Thus, in general, it could be stated that a case falls within Hungarian jurisdiction only if the protection granted exists in the territory of Hungary.

Regarding the question raised, the above means that in case the infringement of a Hungarian protection or a part of such infringing act occurs abroad, Hungarian Courts shall have authority to proceed.

1.1.2 If the Courts assume jurisdiction to decide on intellectual property infringements committed abroad, what are the criteria which allow jurisdiction to be attributed to the Courts of the country (e.g.: nationality of one of the parties, concomitant existence of IP infringements in the country of the Court, domicile of the defendant, etc.)?

According to Section 54 (1) of the PIL, a Hungarian Court shall have jurisdiction in all cases in which the defendant's domicile or residence or, if the defendant is a legal person (or de facto corporation), its registered address is in Hungary, unless its jurisdiction is expressly precluded by PIL.

According to Section 54 (2) of the PIL, when a lawsuit involves more than one defendant, it may be adjudicated in a Hungarian Court of law for all of the defendants if the domicile (registered address) or residence of at least one of the defendants is in Hungary, provided the subject of litigation is a common right or a common liability that can only be resolved uniformly, or if the ruling would affect all defendants, even those not appearing in court, or if the claims under litigation originate from the same legal relationship.

Whenever a Hungarian Court has jurisdiction in a lawsuit, it shall also have jurisdiction over any counterclaim (Section 54 (4) of the PIL).

Hungarian legislation does not expressly address the issue of "the concomitant existence of IP infringement". As set forth above, proceedings of the Hungarian Court are probable only if the infringement committed abroad is part of an infringement committed in the territory of Hungary.

Infringement committed jointly abroad and in the territory of Hungary could occur in the case of patent infringement, when, for example, someone - without the authorization of the patentee - hands over something (e.g., instrument, or a piece of equipment) in connection with the exploitation of the invention to someone who is not entitled to exploit the invention, for the purpose of realizing the invention, while fully aware that the object is suitable for the realization of the invention or can be utilized for that purpose (Section 19 (3) and Section 35 of the Patent Act of 1995).

In these cases, the Hungarian Court could proceed against the foreign party on the grounds of contributing to the patent infringement.

1.1.3 Is this assumption of international jurisdiction specific to the civil law courts, or does it also apply to the criminal law courts?

The territorial and personal scope of the Criminal Code (Act No. IV of 1978) includes the crimes committed in the territory of Hungary, as well as crimes committed by a Hungarian citizen abroad, if such acts are considered as a crime according to Hungarian legislation. In these cases Hungarian law is applicable.

According to the Act No. I of 1973 on Criminal Procedure, cases - which are exclusively under jurisdiction of the Hungarian criminal court - shall be tried according to the rules of Hungarian criminal procedure. Thus, the Hungarian criminal court can also proceed in those infringement cases in which the crime is committed in the territory of Hungary, irrespective of the fact that the offender is a foreign citizen.

1.2.1 If the domestic Courts may assume jurisdiction to judge IP infringements committed in another country (cross-border infringements), what are the sanctions imposed by the domestic Courts?

Taking into consideration that the infringement of the patent - which is registered in Hungary - took place abroad, the Court will apply Hungarian law (Section 20 of the PIL), since such acts are part of another act infringing an existing protection in Hungary.

Therefore, domestic Courts may impose sanctions which are in conformity with the provisions of the TRIPS Agreement.

1.2.2 Can the domestic Courts only award compensation for loss (damages) or do they also assume jurisdiction to impose injunction with effects abroad?

The Hungarian Court not only can award indemnification, but also can forbid - by issuing a preliminary injunction - the infringer from further infringement.

The issue of injunction, however, should be distinguished from the arising question of whether - in accordance with their respective national law - such decision could be recognized and executed in other countries.

I.2.3 Is there a difference between final sanctions and provisional sanctions from the point of view of international territorial jurisdiction?

There is no difference. We refer to the previously mentioned fact, namely that the ruling of the preliminary injunction should be distinguished from the recognition and execution of the decision.

I.3.1 Which law is applied by a court, which assumes jurisdiction to judge IP infringements committed in another country?

According to Section 20 of the PIL, an inventor and his legal successor shall receive protection according to the law of the state and in the state in which the patent was granted or where the application was filed. This rule is also applicable with regard to other industrial property rights (design, trademark, etc.).

If the act committed abroad is part of a Hungarian patent infringement committed in the territory of Hungary (contributory infringement, please see the answer given in Part I. 1.2. on Section 19 (3) of the Patent Act), the Court will apply Hungarian law.

The PIL allows the parties to mutually request that the applicable foreign law be disregarded; if so, then the relevant Hungarian law shall apply in place of that foreign law, or should the parties select the applicable law, the law so selected shall apply then (Section 9 of the PIL).

I.3.2 Is it the law of the forum, or is it the law of the country in which the infringement has been committed?

According to Section 20 of the PIL (see answer in part I. 3. 1.), for its decision about the infringement, the Court applies the law of the country where the alleged infringing activity was committed. This obviously means that the injured party has protection in the country in question, otherwise, the commission of the infringement could not be interpreted.

I.3.3 What is the scope of the foreign law: defining infringing acts, proof of infringement or sanctions for infringement?

In case the Courts apply foreign law, such foreign law should then be used to determine the following question: the protection is in favour of whom; which act(s) realize(s) the infringement; and to what extent should the protection be interpreted.

The situation is the same when the infringer refers to a valid license agreement or refers to the exception of the exclusive right. These questions shall be decided according to the applicable law.

As the law of the forum is applicable, in connection with the proof of infringement, the Court should apply domestic law in this instance, however, taking into consideration the relevant sections of the foreign law concerning proof.

I.3.4 What is the role of the parties in determining the content of the foreign law: does the burden of proof of the content of this law lie with the parties or is it for the Court, ex officio, to seek the content of the foreign law?

When taking into consideration the content of a foreign law a Court or another authority shall, ex officio, inquire about any foreign law not known to it, and shall, if necessary, obtain the opinion of an expert on point, and may also consider the relevant evidence presented by the party (Section 5 (1) of the PIL).

At the request of a Court or another authority, the Minister of Justice shall provide information on foreign laws (Section 5 (2) of the PIL).

In case it is impossible to establish the content of a foreign law, the relevant Hungarian law shall apply (Section 5 (3) of the PIL).

Hungary is member of the European Convention on Information of Foreign Law signed in London, in June 7, 1968 and the Additional Protocol to the European Convention on Information of Foreign Law signed in Strasbourg in March 15, 1978 (promulgated in Hungary by Government Decree No. 140/1992 (X.20.), which gives member states the possibility to procure information on foreign law.

1.3.5 Does the international public order exception, which allows some countries to exclude the application of foreign law, apply for the infringement of intellectual property rights?

According to the relevant regulations, the application of foreign law shall be disregarded if it conflicts with the Hungarian public order. The application of foreign law cannot be disregarded merely because the social and economic system of the foreign state is different from that of the Hungarian state. The Hungarian law shall apply in place of the disregarded foreign law (Section 7 of PIL).

1.4.1 What are the conditions for the enforcement of a foreign judgement against an infringing party for IP infringement committed in another country?

In principle, Hungarian international private law rules on the recognition and enforcement of foreign judgements are not related to the subject matter of the decision. It is an other issue, however, how in the course of enforcing a foreign judgement against a party domiciled in Hungary, a decision ordering an injunction relating to an act committed abroad can be enforced.

The decisions of foreign Courts and other foreign authorities shall not be recognized if a Hungarian Court or another Hungarian authority has exclusive subject matter jurisdiction with regard to the matter to which the decision pertains (Section 70 (1) of PIL).

On the other hand, the decision of a foreign Court or another foreign authority shall be recognized if it pertains to a matter over which the Hungarian Court has no jurisdiction (Section 71 of PIL).

According to Section 72 (1) of PIL, if neither the Hungarian Court nor any foreign Court has exclusive jurisdiction, the decision of foreign Courts shall be recognised, if:

- (i) the jurisdiction of the foreign Court or foreign authority in question is determined to be legitimate under the rules of jurisdiction of Hungarian law;
- (ii) the decision is final under the laws of the state where it was rendered;
- (iii) there is reciprocity between Hungary and the state where the Court which rendered the decision is located; and
- (iv) there are no grounds for the refusal to recognize the decision as set forth below.

Pursuant to Section 72 (2) of PIL, foreign decisions shall not be recognized, if:

- (i) such recognition would violate public order in Hungary;

- (ii) the party against whom the decision was made did not attend the proceeding either personally or by proxy because the subpoena, statement of claim, or other document on the basis of which the proceeding was initiated was not duly served at his domicile or residence or was not served in a timely manner in order to allow him adequate time to prepare his defense;
- (iii) it was based on the findings of a procedure that seriously violates the basic principles of Hungarian law;
- (iv) before a Hungarian Court or Hungarian authority, relating to the same issue on the basis of the same factual basis present between the same parties, any procedure was started prior to the initiation of the foreign proceeding (suspension of plea);
- (v) a Hungarian Court has already rendered a final judgment concerning the same issue on the same factual basis between the same parties (*res iudicata*).

In summary, violation of public policy, grave procedural mistake (including violation of fair treatment), *lis pendens* or *res iudicata* may exclude recognition of the foreign judgement.

1.4.2 Are there specific procedures?

No special procedure is necessary for the recognition of an official foreign decision. Unless otherwise prescribed by law, this matter shall be resolved by the Court or authority handling the enforcement proceedings (Section 74 (1) of the PIL).

The party concerned may request a special court procedure for the recognition of an official foreign decision in Hungary. In these cases the Court makes its decision in a non-litigious procedure (Section 74 (2) of the PIL).

If the conditions required for the recognition of an adverse foreign decision in Hungary prevail, such decision shall be executed in accordance with the corresponding Hungarian laws. (Section 74/A of the PIL, Act No. LIII of 1994 on Judicial Enforcement).

1.4.3 What are the practical difficulties, which complicate the enforcement of foreign court decisions in intellectual property infringement matters?

If the conditions for the national recognition of foreign decision are in place, the decision could be executed in Hungary according to the relevant rules.

In the field of intellectual property, the Hungarian law on judicial enforcement contains special rules in connection with the execution of the Court's decision (including preliminary injunctions) such as an injunction to cease the infringement.

In case the given decision is recognized in Hungary, all those difficulties exist in connection with the execution, as in the case of the execution of Hungarian decisions.

1.5.1 Are there rules governing lis pendens and related actions for cases where infringement proceedings are pending in parallel before the courts of different countries?

If proceedings arising from the same factual basis and claiming the same rights are in progress between the parties before a foreign Court, or another authority in which the ruling can be recognized as valid, and are ready to be executed in Hungary in accordance with the provisions of PIL, the Hungarian Court or another authority may subsequently terminate the proceedings or the Court shall reject the statement of claim without issuing summons (Section 65 of the PIL).

The foreign decision could not be recognized, if proceedings arising from the same factual basis and for the same rights are in progress between the parties before a foreign

Court or another authority and the procedure was started prior to the initiation of the foreign proceedings.

1.5.2 Do the rules on lis pendens and related actions require the court to decline jurisdiction in favour of another court, or do they merely allow it to stay proceedings while awaiting the result of the pending dispute in another country?

The question supposes that a procedure was initiated between the same parties, in parallel before a domestic and foreign Court, based on the same grounds and seeking vindication for violation of the same rights.

Regarding the instant question, those cases should be excluded, where one of the states involved has exclusive jurisdiction or its jurisdiction is excluded.

In case the jurisdiction is excluded, the claim shall be rejected without the issuing of the summons; however, in case of exclusive jurisdiction it is irrelevant whether the procedure has been initiated before another Court, as in any event the decision cannot be recognized.

In order to avoid having different decisions ordered in different countries for the same legal question, in connection with the rules of lis pendens and suspension of plea the following could be stated:

- a) In case the proceeding has been initiated abroad and the decision in this procedure could be recognized and executed in Hungary, after the initiation of the above mentioned procedure, the Court in Hungary could terminate the procedure.
- b) In case the procedure initiated before the Hungarian Court has taken effect, and the statement of claims was delivered to the attention of the foreign party, the Hungarian Court will proceed, as the foreign decision cannot be recognized nor enforced.
- c) In case the initiation of the procedure in Hungary took place before the initiation of the foreign procedure, but the defendant was not yet served with the complaint, the Hungarian Court, based on the request of the defendant, could suspend the procedure according to Section 152 of the Code of Civil Procedure. Thus, the decision of the foreign Court could have an effect on the Hungarian procedure.

II. Proposals for the future:

II.1.1 Do the Groups think that it is possible and desirable to seek a harmonised system for cross-border litigation, while intellectual property rights are currently, in the majority of cases, solely of national scope

Harmonized system will be reached only in the distant future and within the framework of those regional or multinational treaties which create uniform law with respect to both substantive law and procedural law. Intellectual property rights (especially patent rights) are territorial rights, and the content of the monopoly rights arising from IP rights are granted in the respective states on the basis of their sovereignty. Therefore, the states base the decision on the validity and scope of IP rights falling under their exclusive jurisdiction.

The territoriality of the protection can be established even if the TRIPs Agreement regulates the form of the protection; however, there are significant differences with respect to such IP rights since the TRIPs Agreement sets forth only minimum requirements, does not create a uniform law, or a uniform jurisprudence on the basis of any uniform law.

Due to the exclusive jurisdiction of the respective states, the differences in their procedural laws should also be taken into consideration.

Therefore, real harmonization can be achieved only through the simultaneous harmonization of both substantive law and procedural law.

II.1.2 Do the Groups think that such a harmonised system requires the existence of intellectual property rights which have the same effect in various countries (e.g. at least a regional right)?

A harmonized law requires - even with respect to regional harmonization - that the protections of the respective IP rights shall have the same effect in all states. It shall be taken into consideration that such requirement has not been met even with respect to the regional treaty on European patents since the patent rights granted by the European Patent Office are independent patents in the Member States of the European Patent Convention. Further, national patents are granted by the Member States with the territorial effect relating only to their respective territory. Indeed, there are court cases in which the same European patent has been interpreted in different states in a different way or with a different scope (i.e., EPILADY case).

II.2.1 If the Groups consider that it is desirable to seek a harmonised system of litigation in cases of cross-border infringement, it would thus be necessary to organise such litigation.

As set forth in Section II.1.1. above, harmonization relating to substantive law and procedural law shall be achieved simultaneously. Therefore, harmonization shall cover matters relating to the jurisdiction and competence of the forum.

II.2.2 What should be the preferred criteria for choice of forum

We consider it justified that, primarily, the Court of the state where the patent under protection has been infringed shall proceed in the case. Given that, in the majority of infringement cases, the defence of the defendant is related to the validity of the patent protection, an issue belonging to the exclusive jurisdiction of the state which granted the patent.

However, if the same defendant has infringed patents granted in several countries, with the same subject matter, it might be more practical that the Court of the state wherein the seat of the infringer is located proceeds in such a case and renders a decision.

II.2.3 What then should be the applicable law to organise the infringement proceedings?

The procedure shall be governed by the procedural law of the state of the respective Court (*lex fori*), since neither the judge nor the parties can be expected to know the procedural law of different states and to act accordingly.

II.2.4 What extent would the power of the judge have: merely assessing the infringement, or also assessing the validity of the foreign right with the possibility of invalidating it?

The judge shall not be entitled to decide on the validity of a foreign IP right, not even one with inter partes effect.

II.3.1 What is the applicable law for judging infringement and sanctions applicable to it?

Regarding infringement, the law of the state (with respect to establishing both infringement and sanctions) where the respective infringed IP right was registered shall be applied.

II.3.2 And what scope should the application of this law have (defining infringing acts, proof of infringement or sanctions for infringement)?

Both the infringement and the sanctions arising from the infringement shall be established on the basis of *lex loci protectionis*. With respect to procedure, however, *lex fori* shall be applied.

II.4.1 Should the rules on lis pendens and related actions apply in the event of infringement proceedings, which are pending before the courts of the various countries?

Rules on *lis pendens* shall be applied in those cases where proceedings between the same parties involving the same cause of action have been initiated before a foreign Court, provided that the decision of the foreign Court is recognizable and enforceable in that state.

II.4.2 Should it be provided that it is mandatory for courts to decline jurisdiction in favour of the court first seized of the case, or should there be a rule for a stay of proceedings?

It shall not be mandatory for Courts to decline jurisdiction if the proceedings have been initiated before a foreign Court; however, the Court first seized shall be entitled to order a stay of the proceedings.

II.5.1 Should there be provisions for the automatic enforcement of court decisions which are made in such a system or should these decisions always be the object of a procedure for exequatur as normally used to give effect to foreign judgements?

If the law of the state provides for the recognition of a foreign judgement, it should set forth that such judgement shall be also enforceable without any specific procedure.

II.6.1 What is the scope of sanctions which may be imposed by a Court deciding on infringement committed in various countries: can the Court be empowered to judge on the validity of intellectual property rights existing in each of these countries?

If it is possible to initiate infringement related litigation before Courts of different countries, the Court shall not be entitled to decide on the validity of the protection of the IP right relating to other states.

II.6.2 Can the Court impose measures of prohibition applicable wherever this right is valid?

In principle, the Court may impose prohibition measures only within the territory of its state. However, such prohibition may also extend to the territory of those states which are members of a regional treaty where the same IP protection exists (i.e., European community trademarks).

II.6.3 Could the Court order the infringing party to compensate for loss suffered in all countries?

The Court may order the infringing party to pay compensation for losses caused by infringement committed in other states provided that the plaintiff has met the burden of proof required for the payment of compensation for damages (i.e., amount of damage, causal link, etc.). However, it shall be taken into consideration that it might be extraordinarily difficult to conduct the fact finding procedure before the Court relating to the amount of losses and the method of calculating such losses if they occurred in another country.

II.7.1 Should the search for a system, making it possible to organise the progress of proceedings against cross-border acts of infringement, pass through the conclusion of a multi-lateral agreement or is it necessary, according to the Groups, to favour bilateral or regional solutions.

Only on the basis of experiences obtained from the application of bilateral and regional agreements and their distribution can it be established how a multilateral agreement should be prepared.

In our opinion, as long as the patent rights have a territorial effect, and the protection is granted by the respective state on the basis of their sovereignty, which has exclusive jurisdiction relating to the validity of the protection, it is not desirable to regulate in an international treaty only litigation relating to infringement since in infringement procedures the validity or the scope of the protection is often debated.

Summary

There is no published case law relating to cross-border infringement available in Hungary; however, the provisions of the Law Decree on Private International Law provide an appropriate basis for answers to the questionnaire.

The basic applicable provisions of same set forth that a Hungarian Court:

- shall have exclusive jurisdiction over proceedings regarding registration, extent and termination of industrial property rights in Hungary (exclusive jurisdiction);
- shall not have jurisdiction over proceedings relating to the registration, extent and termination of industrial property rights abroad (excluded jurisdiction).

There is no restriction relating to jurisdiction on cases concerning the infringement of Hungarian patents.

Pursuant to the conflict of law rules, the IP rights are protected in compliance with the law of the state where the patent was granted or the application was filed.

With respect to the case of a cross border injunction, in the course of evaluating the possibility of creating international harmonization of law, it shall be taken into consideration that intellectual property rights (especially patent rights) are territorial rights, and the content of the monopoly rights arising from IP rights are granted in the respective states on the basis of their sovereignty. Therefore, the states base their decision on the validity and scope of the IP rights falling under their exclusive jurisdiction. Due to this exclusive jurisdiction, the procedural law of the respective states is decisive.

Therefore, international harmonization should be achieved in both substantive law and procedural law simultaneously, and harmonization should cover matters relating to the jurisdiction and competence of the Courts.

Without the simultaneous harmonization of these issues, the judge shall not be entitled to decide on the validity of a foreign IP right, not even one with *inter partes* effect.

As long as the patent rights have a territorial effect, and the protection is granted by a respective state on the basis of its sovereignty, which has exclusive jurisdiction relating to the validity of the protection, in an international treaty it is not desirable to only regulate litigation relating to infringement since, in infringement procedures, the validity or the scope of the protection is often debated.

Résumé

Il n'y a pas de jurisprudence en Hongrie pour le "cross-border infringement" mais les dispositions de la loi sur le droit privé international (Nmjt) donnent des orientations au sujet des problèmes soulevés.

Les principales dispositions nationales :

- toute cause relative à l'octroi, à l'étendue ou à la déchéance du droit de la protection légale nationale de la propriété industrielle est de la compétence exclusive des tribunaux hongrois (juridiction exclusive);
- les tribunaux et autres juridictions hongrois ne connaissent pas de causes relatives à l'octroi, à l'étendue ou à la déchéance du droit de la protection légale de la propriété industrielle à l'étranger (juridiction exclue).

L'exclusion de juridiction ne s'applique pas aux litiges relatifs aux contrefaçons au préjudice de brevets hongrois.

Selon les règles de rattachement de la loi Nmjt, la propriété industrielle doit être protégée selon le droit de l'État dans lequel le brevet a été délivré et la demande de brevet a été déposée.

Dans le cas du "cross-border injunction", il faut tenir compte du fait, en appréciant la possibilité réelle de la réalisation de l'harmonisation juridique internationale, que les droits relatifs à la propriété intellectuelle et notamment le droit de brevet sont des droits territoriaux, et que le contenu des droits exclusifs qui y sont liés est défini dans le cadre de la souveraineté de chaque État. Pour cette raison chaque État considère que l'appréciation des questions relatives à la validité et à l'étendue de ces droits relève de sa juridiction exclusive. A la suite des exclusivités de juridiction, les droits de procédure différents d'un pays à l'autre jouent aussi un rôle déterminant.

Compte tenu de tout cela, force est de constater que l'harmonisation internationale des droits matériels et procédurals s'impose à la fois. Par conséquent, l'harmonisation devra s'étendre aux questions relatives aux juridictions et aux compétences.

Sans le règlement de l'ensemble de ces questions par la voie de l'harmonisation, la juridiction d'aucun pays ne pourra être compétente pour statuer sur la validité d'une protection étrangère, même pas dans les cadres *inter partes*.

Aussi longtemps que les brevets ont un effet territorial et, par conséquent, que l'État dispose au sujet de leur validité d'une juridiction exclusive, il n'est pas souhaitable de définir par une convention internationale des règles uniquement pour les litiges contrefaçon du breveté, étant donné que dans ces litiges la validité et l'étendue de la protection sont souvent discutées.

Zusammenfassung

Bezüglich der "cross-border infringement" Problematik hat sich in Ungarn keine Rechtssprechung entwickelt, aber die Bestimmungen des Gesetzes über Internationales Privatrecht (IPRG) setzen Richtlinien bezüglich solcher Fragen.

Die grundsätzlichen ungarischen Bestimmungen:

- in den Verfahren bezüglich der Erteilung, Umfang und Löschung eines inländischen gewerblichen Schutzrechtes ist ausschließlich ein ungarisches Gericht zuständig (ausschließliche Jurisdiktion);
- bezüglich der Erteilung, Umfang und Löschung eines ausländischen gewerblichen Schutzrechtes darf ein ungarisches Gericht oder andere Behörde nicht verfahren (ausgeschlossene Jurisdiktion).

Im Rechtsstreit über die Verletzung eines ungarischen Patentes besteht das Zuständigkeitsverbot nicht.

Nach der entsprechenden Kollisionsregel von IPRG wird beim Schutz eines gewerblichen Rechtes das Gesetz dessen Staates angewendet, wo das Patentrecht erteilt, bzw. die Anmeldung eingereicht worden ist.

Bezüglich der "cross-border injunction" infolge der Überlegung der realen Möglichkeiten der Harmonisierung der Rechtssysteme, muss man davon ausgehen, daß die Rechte im Zusammenhang mit dem geistigen Eigentum, besonders was das Patentrecht betrifft, territoriale Rechte sind, wobei der Inhalt der Monopolrechte aufgrund der Souveränität der einzelnen Staaten, von den Staaten selbst definiert wird, und diese betrachten die Entscheidung über die Fragen bezüglich Geltendmachung und Umfang dieser Rechte als zur ihrer ausschließlichen Jurisdiktion gehörend. Infolge der ausschließlichen Jurisdiktion ist auch das Verfahrensrecht der einzelnen Länder ausschlaggebend.

Hinsichtlich des oben ausgeführten ist die internationale Rechtsharmonisierung eine gleichzeitig aus materieller, wie auch aus verfahrensrechtlicher Sicht zu lösende Aufgabe. Daraus folgt, daß die Rechtsharmonisierung sich auch auf die Fragen der Zuständigkeit und Rechtsbereich erstrecken sollte.

Ohne die gemeinsame Regelung dieser Fragen durch Harmonisierung kann ein Gericht des jeweiligen Landes keine Zuständigkeit haben, Entscheidungen bezüglich der Gültigkeit eines ausländischen Schutzes zu treffen, sogar im *inter partes* Verfahren nicht.

Insofern Patente territoriale Gültigkeit haben, und deswegen bezüglich ihrer Gültigkeit der entsprechende Staat über die ausschließliche Jurisdiktion verfügt, ist es nicht erwünscht in den internationalen Verträgen nur die Verfahren zu regeln, die die Verletzungsprozesse betreffen, weil in den Verletzungsverfahren die Gültigkeit oder der Umfang des Schutzes häufig diskutiert wird.