



Lex et Res Publica

Polish Legal and Political Studies

Edited by Anna Jaroń

Volume 4

Agnieszka Kupzok

Enforcement of Patents on Geographically Divisible Inventions

An Inquiry into the Standard
of Substantive Patent Law Infringement
in Cross-Border Constellations

Table of Contents

Table of Figures	19
1. Introduction	21
2. Conceptual underpinnings	27
2.1. Justifications of a system for patent protection.....	27
2.2. Importance of patent enforcement within the patent law regime	37
2.3. Changes in the socio-economic context	40
2.4. Enforcement in transborder network constellations.....	48
2.5. Outline of the legal problem: enforcement of territorially limited patents on geographically divisible inventions and global computer networks.....	60
3. Research question and structure	65
4. Research Context	81
4.1. Literature Review	81
4.2. Enforcement of patent rights.....	88
4.2.1. Territoriality principle and patent enforcement	94
4.3. Patent Rights in the International Legal Order.....	102
4.4. Patent Rights at the regional, European level.....	114
4.4.1. European Patent Convention	117
4.4.2. Chronology of efforts to develop a patent system for the European Union	119
4.4.3. The Unitary Patent Package	125
4.5. Conditions for patent enforcement in the European Union.....	142
4.6. The Internet as a factor in the technological shift in paradigm.....	149
4.6.1. Overview of the Internet development	149
4.6.2. Internet as a technology	157
4.6.3. Regulation in the cloud: legal and socio-economic aspects of cyberspace.....	160
4.6.4. Internet as a factor in patent enforcement.....	170
4.6.5. Geographically divisible inventions (GDIs)/Remotely integrated inventions	173
4.6.6. Computer programs	176
4.6.7. Conclusions on the Context of this Research	185

5. Patent Infringement	187
5.1. Determining patent infringement – a conceptual overview	188
5.1.1. All elements rule	190
5.1.2. Impact of the EPC on national patent infringement proceedings	190
5.2. National Context - Germany	196
5.2.1. Introduction	196
5.2.2. Structure of the German Patent System	197
5.2.3. Territorial nature of patents under German law	198
5.3. National Context – United Kingdom	198
5.3.1. Introduction	198
5.3.2. Structure of United Kingdom Patent System	201
5.3.3. Territorial nature of patents under UK law	203
5.4. Direct Infringement of a Patent	203
5.4.1. Direct Patent Infringement under German law (§9 PatG)	203
5.4.2. Direct Infringement under UK law (Art. 60 (1) 1977 UK Patent Act)	224
5.5. Indirect Patent Infringement	238
5.5.1. Indirect Infringement in Germany (§10 PatG)	238
5.5.2. Indirect Infringement under UK law (Art. 60 (2) 1977 UK Patent Act)	253
5.6. Other forms of liability for patent infringement	259
5.6.1. Other forms of liability - Germany	259
5.6.2. Other forms of liability – United Kingdom	263
5.7. Conclusions from comparative analysis of substantive patent infringement provisions in Germany and the United Kingdom	265
6. Infringement of patents on geographically divisible inventions	269
6.1. German jurisprudence: <i>Prepaid Cards II</i>	269
6.2. UK jurisprudence: <i>Menashe v. William Hill</i>	274
6.3. Discussion	278
6.4. Geographically divisible inventions in the American jurisprudence	281
6.4.1. <i>NTP v. RIM</i>	282
6.4.2. <i>Akamai Tech. v Limelight Netw.</i>	289
6.5. Conclusions based on case law exploration	294
7. Policy implications	299
7.1. Introduction	299
7.2. Current Legislative Proposals	299

7.3. Alternatives to patent-based protection of inventions	304
7.4. Patent-based protection	308
7.4.1. Assessment framework	308
7.4.2. Criteria	314
7.5. Appraisal of solutions provided in the literature	323
7.6. Discussion	332
7.7. Recommendation.....	334
7.8. Final Considerations.....	342
8. Conclusion	347
Zusammenfassung der Dissertation.....	353
Bibliography	371
Abbreviations.....	425
Annex 1 National patent laws.....	431
Annex 2 Unitary patent: infringement provisions	441