

**BUSINESSEUROPE**



# **The Hague Judgements Project**

**Public Hearing of the Committee on Legal Affairs**

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**POTENTIAL INCLUSION OF INTELLECTUAL PROPERTY (IP) TO THE SCOPE OF  
THE HAGUE CONVENTION**

**ILIAS KONTEAS (BUSINESSEUROPE)**

# General remarks on Hague and IP

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- IP owners in Europe were only made aware in mid-2017 of this ongoing negotiation and its potential impact on IP rights.
- We did not proactively call for the inclusion of IP to its scope as we did not felt the need for it.
- BUSINESSEUROPE is against the inclusion of at least patents, trade marks and designs to the scope of the Convention.
- Given the complexity of IP law, we are concerned that we will be faced with unintended consequences.
- Problem of interpretation: no overarching Court with competence to rule on the interpretation of any Hague Convention.



# Conflict with existing IP treaties

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- Paris Convention for the Protection of Industrial Property, one of the oldest IP treaties (1883): two foundational principles, namely national treatment (Article 2) and independence of patents (Article 4bis).
- National treatment: each member country grants not only the same protection to the nationals of other member countries as it grants to its own nationals, but also “the same legal remedy against any infringement of their rights”.
- Under the draft Convention, e.g. it is conceivable that a Paris Convention country (enforcing country) would be obliged to enforce a foreign judgement that would not be enforceable under its own national law or would be enforced differently.



## Conflict with existing IP treaties

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- Independence of patents (Article 4bis): reflects the territorial nature of patents.
- Fate of a patent in one country will be independent of the fate of patents for the same invention in other countries.
- This principle is to be understood “in an unrestricted sense”.
- Enforcing a foreign judgement entails at least a tacit confirmation that the underlying patent was validly granted. Hence, there is room to compromise the independence of the enforcing country.
- In particular, if a patent for the same invention was still pending in the enforcing country, the enforcing country had denied a patent application for the same invention or revoked a patent on the grounds that the invention was not patentable.

# Inclusion brings limited benefit

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- In the vast majority of IP disputes, the primary remedy sought by the IP holder is that of an injunction.
- Differences in substantive and procedural law make cross border recognition of injunctions at present time undesirable.
- Such an arrangement would only be desirable if there existed a wholly harmonised body of substantive law with a set of aligned court procedures.
- Only in the UPC this has been achieved to an extent and to a point that IP holders were content but it has not been tested yet.
- Only financial remedies (e.g. damages) would have the potential to be enforceable.
- Overwhelming majority of IP cases come to an end, before damages are awarded or enforced. Once the issue of the injunction is decided one way or another, issues relating to damages normally fall away or are settled.



# Serious risks and downsides

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- Greater complexity of the litigation system, disrupting the established system.
- Significant uncertainty over the interpretation with no means of resolving it.
- An increase in “strategic” litigation by parties seeking to gain unwarranted benefits.
- Risks of courts competing to provide a favourable and unbalanced regime to would-be claimants.
- Much greater uncertainty, legal costs and risk associated with all IP enforcement activities.



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Thank you for your attention  
For further questions (email:  
[i.kontreas@businessseurope.eu](mailto:i.kontreas@businessseurope.eu))

