

Marketa Trimble

Cross-Border IP Infringement **Patents**

CASRIP 20th Anniversary / IP LLM 10th Anniversary
IP-across Topic Scholarship Conference
July 28, 2012

- ◎ Cross-border patent infringement
- ◎ Online context
 - Selling, offering to sell, using, importing
 - Direct and indirect infringement
 - Unclear jurisdictional bounds

- Litecubes, LLC v. Northern Light Products, Inc.,
523 F.3d 1353, 1366 (Fed. Cir. 2008)
- Blackboard, Inc. v. Desire2Learn, Inc.,
574 F.3d 1371 (Fed. Cir. 2009)

⊙ Lack of concentration of proceedings

- Justiciability
- The Act of State doctrine / sovereignty
- Technical complexity
- Inconsistent results
 - Gesellschaft für Antriebstechnik mbH & Co. KG v Lamellen und Kupplungsbau Beteiligungs KG, ECJ, C-4/03, 13 July 2006
 - Jan K. Voda, M.D. v. Cordis Corporation, 476 F.3d 887 (Fed. Cir. 2007)
 - Lucasfilm Ltd. v. Ainsworth, [2011] UKSC 39, [2011] 3 WLR 487 (U.K. Supreme Court, 2011)

◎ Bifurcation of proceedings

- Bifurcated versus non-bifurcated systems
- Protraction of proceedings
- Inconsistent results

- Solvay SA v Honeywell Fluorine Products Europe BV and Others, C-616/10, 12 July 2012

- ◎ Territorial limits on the Internet
 - Localization of the acts
 - Limitations of enforcement outside the protecting country
 - Enforcement of injunctions
 - Design-arounds
 - Geolocation
 - Evasion of geolocation

◎ Solutions

- Unified patent system
 - Centralization of proceedings
 - Procedural harmonization
 - Substantive harmonization – de facto / de jure
- Mutual cooperation in enforcement on the Internet

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