

**Towards a European and European Union Patents Court:
The Link between the EEUPC and the Court of Justice of the European Union
– A Sketch –**

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I. Introduction

Constraints of time do limit this contribution to a discussion, which may already be too limited. What is behind our general topic “Towards a European Patent Court” is not simply the prospect of the establishment of a specialized international patent judiciary. Rather, it is a fundamental change in the Union’s traditional approach to harmonization and unification of intellectual property protection. Whereas the Community, now the Union, developed its own autonomous policy of modernization of intellectual property law, when it first harmonized, and then, by the creation of a system of its own, unified the protection of trademarks and designs, it is now about to altogether abandon its powers of harmonization of national patent protection in favor of an autonomous international patent system, and it is willing to transfer all jurisdiction over its future unitary Union patent to a self-contained international judiciary. The Court of Justice of the Community has played an important role in matters of intellectual property protection not only as regards its relationship to primary Union law. Rather, it has considerably contributed to the development and to the direction, which intellectual property protection has taken in the areas of harmonized and unified copyright, trademark and design law. Under the EEUPC-system, as proposed,² it will have no such role to play. My point here is to make it clear that the Court of Justice will not merely be driven at the margin of the system, but, for all practical purposes, out of the system of European and of Union patent protection. I see this as a problem of Community policy, not of competence (which, of course, it is as well). More precisely, I see a problem of systems coherence both on the level of general intellectual property law and of (primary and secondary) Community law, and this presents, and foremost so, a problem of the Union as an autonomous legal and political order.

II. The role of the ECJ in EU intellectual property matters

1. *Harmonized copyright law: Guiding national courts*

Looking first at copyright law, two salient features are most relevant for our analysis. One is that most of the harmonization efforts of the Community have been informed

² Given the theme of and the contributions to the Conference, familiarity with *Council of the European Union*, Doc. 7928/09 of 23 March 2009 “Draft Agreement on the European and Community Patents Court and Draft Statute” - Revised Presidency text, and with the proposed Community Patent Regulation is assumed. For a recent general presentation of the development and status of the “Community Patent”, see *Th. Jaeger*, *The EU Patent: Cui bono et quo vadit?* 47 *CML Rev.* 63 (2010).

by what has been called, right at the beginning, the technological challenge. The catchwords are computer programs, electronic databases, the rental right, satellite and cable broad casting, neighboring rights, which are related thereto, and copyright in the information society, which latter is the ultimate catchword. The other feature is, that harmonized copyright law is national law, and as such, construed and applied by national courts. They do so, and have to do so, in the light of secondary Union law, the harmonization directives. In this respect, and to this extent, they are guided by the rulings, which the Courts delivers, upon their request, on the basis of Art. 267 TFEU. As is known, Supreme Courts are required to submit such requests. The role, which the Court has played in replying to such requests, is impressive, and certainly not negative. It has framed the scope of sui generis database protection,³ and it has upheld the rental right against several attacks, including some supported by national governments.⁴

2. *Trademarks and designs: Bringing national and Community courts together*

a) Harmonized national protection

The situation is similar as regards the harmonized national laws of trademarks and of designs. With respect to both, trademarks and designs, harmonization represented a major effort of modernization. This holds true for the concept of a trademark, for the introduction of service marks, the notion of confusing similarity, the obligation of use of the mark etc. It is also, and particularly true for designs, where the very concept of protection was in need of a new, generally acceptable basis (overcoming the alternative between a patent and a copyright approach).⁵ As in copyright law, national courts applying their harmonized national laws sought guidance by the Court of Justice, and obtained it in the form of a rapidly developing and rich case-law. This cannot be presented here.⁶ The point is, that, on the basis of

³ See ECJ of 9 November 2004, case C-203/02, British Horseracing Board/William Hill, Rep. 2004 I 10415 and companion cases; recently ECJ of 5 March 2009, case C-545/07, Apis-Hristovich EOOD/Lakorda, not yet officially reported.

⁴ ECJ of 28 April 1998, case C-200/96, Metronome Musik/Music Point Hokamp, Rep. 1998 I 1953; of 22 September 1998, case C-61/97, FDV/Laserdisken, Rep. 1998 I 5171; of 12 September 2006, case C-479/04, Laserdisken/Kulturministeriet, 2006 I 8089; for the development of harmonized copyright law in general see *Leistner*, Copyright law in the EC: Status quo, recent case law and policy perspectives, 46 CML Rev. 847 (2009); *Dusollier*, Les droits intellectuels, J. dr. eur. 2010, 49 50 et seq.

⁵ See „Auf dem Weg zu einem europäischen Musterrecht“ Diskussionsentwurf des Max-Planck-Instituts (with report *Ritscher*); GRUR Int 1990, 559; *Dinwoodie*, Federalized Functionalism: The Future of Design Protection in the European Union, 24 AIPLA Qu. J. 611 (1996).

⁶ See *Leistner*, Harmonization of intellectual property law in Europe: The European Court of Justice's trade mark case law, 45 CML Rev. 69 (2007); *Dusollier*, loc. Cit. J. dr. eur. 2010, 52 et seq.

Art 267 TFEU, the Court was and will be able to inform the coherent development of harmonized national trademark law upon request of a large number of national courts following different national traditions of the application of the law, and of trademark law in particular. The Court thus fulfills not only the role of a guardian of uniformity, but also that of a guide providing an orientation for the evolution of law. It does so, because diversity may not simply be overcome by approximation or leveling off, but only by guidance towards a uniformity of the law, which will be accepted by all.

b) Unitary unionist protection

Remarkably, in addition to its inherent function to review the decisions of the OHIM (Art 65 TM Reg.), the Court is attributed a similar role of guidance under the regulations establishing a Community trademark and a Community design respectively. Indeed, with respect to infringement proceedings and counterclaims for revocation or for invalidity of the exclusive right, both regulations provide for the application of their rules by national courts, these acting as “Community trademark courts” or “Community design courts” by designation of the Member States. Although Member States are invited to designate “as limited a number as possible of national courts” (Art 95 TM Reg.), they seem to have been quite generous in this respect. Anyway, as a rule, these hybrid national/Community trademark and design courts are the same as those that may exercise jurisdiction over harmonized national trademark and design law. The result is, that it is the same courts, which will collaborate with the Court of Justice within the framework of Art 267 TFEU, and require, either upon their own judicial discretion (lower courts) or as a matter of an obligation of Community law (courts of last instance), a preliminary ruling on the application of either the harmonization directive or the Community trademark or design regulations. This means not only that the Court may exercise its role of guidance with respect to both bodies of law, harmonized or unitary, but also, that national courts are likely, and, indeed, invited, to benefit from the rulings made with respect to one body of law when applying the corresponding rules of the other body of law.

c) Coherent interpretation

In fact, the Court has consistently looked at that the parallelism of the rules of the directives on harmonization of trademarks and designs, and of the regulations on

the Community trademark and on the Community design ought to be mirrored by as close a parallelism of their construction as possible.⁷ The rationale underlying this care for coherence of both systems is explained by that, with a very few exceptions, the Community has not given way to the temptation to make its own unitary system of protection more attractive in terms of substance. Rather, the Community relies on the procedural and financial advantages of its system, and sees as to that the modernization benefits of harmonized national law will actually be available for and accrue to market actors who, for one reason or the other, do not or may not opt for the unitary Community protection. Optionality between the two ways of protection should neither penalize those who, in fact, have no real choice, nor open up opportunities to circumvent “disadvantages” or public interest rules of one of the systems.

3. *National, European and European Union patents: No role for the Court!(!?)*

a) The system of patent protection as it stands

As stated in the beginning, the EEUPC-proposal represents a fundamental break with the Community’s approach to harmonization and unification in the areas of trademark law and design law, and with the role, which the Court of Justice has been assigned to play to make the common policies of harmonization and unification become a legal and economic reality. To fully understand this break, it is useful to recall two major problem areas (among many others) of the present system of patent protection. One of these aspects is, that the advantages and the success of the European patent system has relegated most national patent systems, in particular the non-examining systems, to a secondary rank. Yet, due to the international character of the EPC-system, it is only these secondary national systems, which the Union may autonomously subject to modernization by harmonization. The difficulties to make the supplementary certificates or the Directive on the protection of biotechnological inventions effective on the EPC-level should not be forgotten.⁸ The Community depends on the goodwill of the EPO and of its Contracting States.

⁷ This care for parallel interpretation explains not only ECJ of 16 July 1998, case C-255/96, *Silhouette International Schmied/Hartlauer*, Rep. 1998 I 4799 regarding non-international exhaustion (see conclusions Advocate General *Jacobs* *ibid.*, p. 4802, 4816 et seq.), but is demonstrated by that the Court tends to set forth both sets of rules when stating the statutory background of its decisions.

⁸ As regards the former, Art 63 EPC had to be modified first, which, given the limited and pro-protection nature of the supplementary certificates, was relatively easy; as regards the latter, the

The other aspect is that the EPC represents uniform international law harmonizing mainly pre-grant, but also some major post-grant rules, including not only the term and the substantive scope of protection, but also and exhaustively the grounds for invalidation (Art 138 EPC). The substantive scope of protection (interpretation and limitation of claims) and the grounds for revocation (the criteria of patentability) are subject to the EPO's independent and exclusive jurisdiction as exercised, in last instance, by its Boards of Appeal (Art 21 et seq., 106 et seq. EPC). However, national courts, though held to uniform interpretation of the EPC, it representing uniform international law, do constitute a counterweight. It is them who exercise jurisdiction over invalidation, *id est*, precisely over the criteria of patentability. They thus indirectly exercise a control over the grant of patents. The EPO cannot afford to systematically grant patents, whose acceptance by national courts is subject to serious doubt. It is at this point more clearly than at others that EPO-granted patents are national, because subject to national judicial review as regards their very existence.

b) The EEUPC-proposal: More than merely a specialized judiciary

The present systems of protection of nationally granted and of EPO-granted patents will be changed fundamentally by the proposal for a European and European Union Patent Court, because it does much more than merely suggest the establishment of a specialized patent judiciary. It rests, indeed, on a two-pronged approach.

(i) The EPC-patent system: International instead of internal harmonization

First, in accordance with its origin in the EPLA-project⁹, the EEUPC agreement will set up a full-fledged European system of internationally harmonized "national" or rather internationally uniform patent protection. It introduces a full set of rules on post grant patent law as it relates to the scope of the exclusive rights conferred on the patentee, including the exceptions there from, thus defining what constitute

problematic modification of the EPC was circumvented by a no less problematic change of the Implementing Rules of the EPC, see *Schatz, Stauder in Singer, Stauder* (eds.), *Europäisches Patentübereinkommen*, 10th ed. Cologne (Heymanns) 2010, Art 53 annot. 64 et seq.; *Mellulis in Benkard* (ed.), *Europäisches Patentübereinkommen*, Munich (Beck) 2002, Art. 53 annot. 39 et seq., all failing to discuss, whether rules of substantive law, such as those of the EU-Directive on biotechnological inventions, could lawfully be introduced into the EPC-system by a modification of the Implementing Rules only.

⁹ See *Luginbuehl*, *The Future of Centralised Patent Litigation in Europe: Between the EPLA and the EU Patent Judiciary*, in *Leible, Ohly* (eds.), *Intellectual Property and Private International Law*, Tübingen (Mohr Siebeck) 2009, 231.

infringement (Art 14 c) et seq.). Likewise, it sets forth the sanctions for and remedies to infringement (Art 37 et seq.). These rules, just as the rules on procedure (Art 21 et seq.) and on the powers of the court during proceedings (Art 34a et seq.) are necessary for the court to exercise its functions as a specialized and largely centralized judiciary for the adjudication of actions for infringement and for the revocation of European, i.e. EPO-granted patents (Art 15, 37 et seq., 381). They mean, however, the transformation of the EPO system for the grant of European patents into an EPC-system of full patent protection, which stands on its own feet. With the exception of rules on such delicate public interest-rules as are those on exhaustion and on compulsory licenses, which are left to national law, and thus relegated to the level of impracticality, it will be an accomplished system.

This transformation of the EPO as a system for the mere grant of patents into an EPC-system also for the full protection of patents, has at least three important political and practical implications. First, as the EEUPC will be based on an international convention, the proposal, if made a reality, will result in an international harmonization of the law of national patents to the extent that these patents are granted by the EPO rather than nationally. This international harmonization will exclude EU-harmonization of the law of patents other than that for nationally granted patents, since EEUPC-law may be revised and modified only by international convention, i.e. with the consent of non-Member-States of the EU.

Second, as EEUPC-law is in the nature of international uniform law to be applied directly and exclusively by the EEU Patents Court, neither national courts nor the Court of Justice will have a saying on its interpretation or application, except if EEUPC-law, as it relates to European patents, raises issues of a conflict with primary Community law. Thus, to the difference of what has been said in respect of harmonized and unified trademark and design law, there will be no legally necessary, but at best only a de facto, albeit politically desired and desirable parallelism of interpretation with the law of a future Community patent. As a result, should there emerge a practical parallelism, it will so emerge only to the extent that the EEUPC wishes to see it, because it is only the EEUPC, not the ECJ, which may construe and apply EEUPC-law as it relates to European patents¹⁰.

Third, as a result of all of this, the EPC patent or "European" patent has become a much more attractive alternative to an eventual Community or Union patent. It

¹⁰ The problem has recently been well illustrated by the refusal of the Enlarged Board of Appeal of the EPO (dec. of 25 November 2008-G2/06, GRUR Int 2010, 230) to submit those very issues of the interpretation of Rules 23d et seq. (now 28c) of the Implementing Rules which transform Art 6 EU-Directive on biotechnological inventions into EPC-law, to the ECJ for preliminary ruling. A year later, BGH of 17 December 2009, GRUR Int 2010, 236 – "Neurale Vorläuferzellen" has requested a preliminary ruling from the ECJ on precisely these issues of the law of biotechnological inventions.

maximizes protection and minimizes its burdens, such as may result from rules on prior user rights, on government use or on compulsory licensing in cases of insufficient use, of improvement patents or of public emergency, since all these exception and burdens remain national. It is almost immune against modification, and it remains largely isolated against non-patent specific considerations as might be taken in to account by general courts, such as the ECJ. Finally, its effects, both as regards exclusive protection and its invalidation, remain limited to the territory designated by the applicant (Art 16). Thus, the EPC-patent combines the necessary geographic scope of protection and the centralization of enforcement with the advantages of a territorially selective bundle of national rights (as regards e.g. assignments, maintenance or abandonment).

(ii) A European Union Patent subject to full international jurisdiction

Obviously, the Union's loss of the power to define its own patent policy by way of harmonizing the law of EPO-granted patents cannot be compensated for by its remaining power to harmonize the law of nationally granted patents. Therefore, the establishment of a system of unitary Union patents becomes all the more important as a way to autonomously formulate an EU patent policy supporting its own innovation policy and regulating an innovation-driven Internal Market. This is what the proposal for a Regulation on the Community Patent is all about. Its provisions essentially correspond to those of the EEUPC-proposal, but this is not simply because it is the EU, who is the author of the EEUPC proposal. Rather, in part, this similarity is due to that the EPLA-project already contained essentially the same rules. Mainly, however, this correspondence of the respective substantive rules of patent protection reaches back into the past, because it largely mirrors a patent law consensus, which has been established much earlier by the former projects of a Community Patent Convention. The problem is, on the one hand, that ultimately the rules of the EEUPC will be determined through international negotiation, and, on the other, that the parallelism of the future European patent rules and of the future Community or Union patent exists only on the face of the rules. They are of different origin and nature. Thus, their de facto parallelism it is not one, which the ECJ is called upon to ensure and maintain. This has already been stated from the perspective of the European patent, which is controlled only by the EEU Patent Court, Unfortunately, it is also true from the perspective of the Community patent.

The reason is obvious enough, since it is the very object of the EEUPC-proposal to transfer full jurisdiction over all matters of infringement and revocation of Community patents to the new Court (Art 15). This Court, which precisely is called a European and European Union Patent Court, will adjudicate infringement, invalidation (revocation) and the grant of compulsory licenses for Union Patents, this, by the way, being the main point of difference between the European and the Union Patent. This transfer of jurisdiction implies, as Art 14a) of the EEUPC-proposal expressly states, not only the transfer to an international court of the power to apply Community law, in particular the future Regulation on the Community Patent. Rather, it means, that the ECJ loses all control over the Community Patent. This is, without doubt, true for the possibility to review the grant, the infringement and the revocation of the Community patent, so over whether and to what extent the Internal Market is covered by a unitary right of exclusivity, because this loss of control is the very purpose of the establishment of the specialized EEU Patent Court. It excludes even any indirect control of the kind national courts can or could exercise over the grant of patents by adjudicating actions or counterclaims for revocation (as mentioned supra sub a)). In addition, however, the transfer of jurisdiction over Community patents also excludes the ECJ from exercising any meaningful power of review of the development of the rules of Community patent law. The reason is that the procedure for request for preliminary rulings, which is provided for by Art 48 of the EEUPC proposal, is a transplant from the general judicial system of the Community, which will not bring any fruits in the entirely different context of the EEUPC-system.

(iii) Requests for preliminary rulings: Too loose a link

Basically, the reasons for this negative assessment are twofold.¹¹ First, the *raison d'être* of Art 267 TFEU, the risk or even existence of a diversity of national jurisprudence, from which the ECJ's preliminary rulings draw both their justification and their inspiration, does not exist in the context of the EEUPC. It essentially and intentionally is a centralized judiciary established precisely to guarantee uniformity of the interpretation and application of European and European Union patent law. Art 48 of the EEUPC-proposal adds nothing in this respect. Extension of the right to

¹¹ Art 48 of the revised Presidency text (supra n. 2) differs from the Draft as contained in Council Document 5072/09 of 8 January 2009 in that it extends the right to request preliminary rulings to the Court of First Instance of the EEUPC (and thus to its divisions), whereas the latter document provided only for requests by the EEU Court of Appeal. It is this modification, which made me rethink the rationale and the effectiveness of such procedures in the EEUPC-context.

request preliminary rulings to the local and regional divisions of the Court of First Instance of the EEUPC does not alter this assessment either. These divisions precisely are part of one court, or, at any rate, they are judicial bodies within one unitary jurisdiction, not national courts of different Member States. It is the task of the EEUPC's Court of Appeals to assure uniformity of their jurisprudence as a matter of review within the EEUPC-jurisdiction, as is the case within any specialized jurisdictional system of two levels.

Second, the EEU Patent Court will be a highly expert, specialized court entrusted expressly with the application, including the interpretation of Community patent law. It might be uncertain about the pertinence of general Community law, in particular of primary Community law. But why should it seek legal advice on matters of Community patent law from another court? Application of Community patent law is what constitutes its specific remit, and it is precisely the development of its own jurisprudence in this field, which will establish its independence and reputation. In fact, Art 48 is meaningless in this context, because it is either any or no question of interpretation of Community patent law, which may justify a request for a preliminary ruling. The EEUPC cannot be supposed to answer only the clear or unimportant questions itself, and to refer problematic or important issues to the ECJ. In that respect, it is in quite a different position from that held by national Supreme courts acting as Community courts, such as those designated to apply Community trademark or design law. These may and must submit a request for a preliminary ruling, whenever an issue of law lends itself to different solutions and, therefore, holds the potential for diverse holdings being expressed by the courts of the various Member States.

In short, it is neither to be expected nor within the logic of the EEUPC-system, that Art 48 will establish a firm and meaningful link to the ECJ as regards the law of the Union patent. Therefore, on its basis, the Court of Justice will have no role to play as regards the development of the Union's rules relating to its own unitary form of patent protection. In fact, what is really at stake is not the risk of diversity or a guarantee of uniformity, but the consistency or rather the "coherence"¹² of the development of this body of law as such and as regards its embedment in the broader system of Community law and, in particular of Community intellectual property law. Whether and where such issues of coherence arise, however, is not a matter to be decided by the specialized, international EEU Patent court as a matter of requesting or not a preliminary ruling. Rather, the responsibility for such

¹² The German, French and Italian versions of the TFEU more properly use the term „Kohärenz“, “cohérence”, and “coerenza”.

coherence, and the initiative to bring it to review by the Court of Justice must be with the Union's own institutions, and, if possible, also with its citizens.

(iv) Introduction of a further appeal analogous to Art. 256 (2),(2) TFEU

Therefore, instead of or rather as a complement¹³ to Art 48, a rule similar to Art 256 para. 2, 2nd sent. TFEU should be introduced. Art 256 (2),(2) provides for the possibility to "exceptionally" introduce a further appeal from a decision of appeal taken by the General Court (the former Court of 1st Instance), "where there is a serious risk of the unity or the consistency of Union law being affected" by the decision. The decisions in question concern appeals, which have been brought against the decisions issued by specialized courts attached to the General Court. There is no reason why the decisions of the Court of Appeals of the EEUPC should not be subject to the same review by the ECJ as are the decisions of appeal of the General Court. Both Courts are on the same level, and the issues they have to decide on upon appeal relate to similarly "technical" matters, which, on the level of further appeal, typically develop into broader and "genuine" questions of law.

According to Art 62 of the Statute of the Court of Justice, such further appeals may only be brought by the First Advocate General. Since the First Advocate General is a member of the Court of Justice, the initiative would lie with the ECJ itself. This resembles the procedures for selecting cases, which apply before some constitutional courts, but differs in that the parties do not have a right to submit a request for review. It would, however, be easy to install a procedure allowing parties to at least formally suggest to the First Advocate General to introduce such further appeal. Such a "light" procedure would not affect the First Advocate General's discretion as to whether or not to bring a further appeal, but it would considerably alleviate his task of monitoring the judicial activity of the EEU Court of Appeals.¹⁴

¹³ Maintaining Art 48 at least in its unrevised form, so essentially for the EEU Court of Appeals (see supra n. 11), would offer a way for the Court not only to anticipate on and to avoid a further appeal on the basis of an Art 256(2)(2)-equivalent to be inserted in the EEUPC, but also to speed up the clarification of coherence-issues as raised by the parties. In this regard, an optional right to request a preliminary ruling would suffice. If made mandatory, the Art 256(2)(2)-equivalent of the EEUPC would have the function of an (as of yet missing) mechanism for sanctioning failures to request preliminary rulings. Such a mechanism may be necessary anyway with respect to preliminary rulings on primary Community law, unless the Art 256(2)(2) equivalent may be triggered by the parties themselves (see text infra). There exists, therefore, an interdependency between a preliminary request-procedure and a procedure of further appeal, which requires the design of a proper balance between the two procedures. This may be done in different ways, but needs to be done by a careful fine-tuning of both procedures.

¹⁴ Note that Art 62 of the Statute anyway, albeit only implicitly imposes such a task on the First Advocate General in case specialized courts are established, which are attached to the General

Another question, not to be answered here, is whether affording parties a genuine procedural right to such further appeal may even be required by Community law. After all, the citizens of the Union are entitled to obtain and to enforce, but also to defend themselves against the exclusive effects of a unitary Union patent on the basis of a coherent Community legal order.

III. Conclusion

To conclude, in addition to the limitations and, indeed, to the virtual exclusion of the Court of Justice from the operation, the development and the judicial guidance of harmonized and even of unified, unitary patent protection within the Union's market, whatever is left to the Court as a matter of judicial autonomy is further restricted by the principle of optionality between the European and the European Union Patent. Applicants are entirely free to seek protection under either the former or the latter system. As a consequence, the Court of Justice may hardly give a ruling on the European Union patent without taking account of that patent applicants may in the future prefer to seek the possibly more favorable protection afforded by the European patent. Such competition of legal systems has its merits, but it may also enter into conflict with the Union's unitary legal and judicial patent policy. For many reasons, and in view of its various forms of modern use¹⁵, patents will become even more important in the future, and so will their proper embedment in a coherent Community legal order of protection and limitation. The establishment of a specialized EEU Patent Court will be an important step forward as a matter of institutionalizing an effective patent system. However, we should not overdo an exclusivity of its jurisdiction, which is based mainly on grounds of specialization. A brief look at the United States teaches quite a lesson about the risks of such jurisprudential isolation, and about the difficulties and efforts of their Supreme Court to make patent law work properly within a coherent overall legal order.¹⁶

Court. It is difficult to see, why the establishment of the EEUPC should result in a specialized jurisdiction, which is exempt from such - necessarily selective - "monitoring".

¹⁵ Once being a form of protecting innovation and production, patents have now also become bargaining chips for cooperation, mergers and acquisitions, and they are exploited independently from production as an asset in their own right (see *Remiche*, La propriété intellectuelle au cœur d'une nouvelle stratégie, in *Drexl et al* (eds), *Technology and Competition – Technologie et concurrence* (Mélanges H. Ullrich), Brussels (Larcier) 2009, 275). As such, they raise new issues far beyond those that can be dealt with by competition law, see *Ullrich*, *Propriété intellectuelle, concurrence et régulation - limites de protection et limites de contrôle*, *Rev. int. dr. écon. (RIDE)* 2009, 399, 420 et seq., 430 et seq.

¹⁶ See only *Soltysinski*, *The Patent Reform Act and Recent U.S. Supreme Court Decisions – A Correction of the Intellectual Property Policies?*, in *Prinz zu Waldeck and Pyrmont et al.* (eds.), *Patents and Technological Progress in a Globalized World* (Liber amicorum J. Straus), Berlin (Springer) 2009, 853.