

2022 WIPO Intellectual Property Judges Forum

Promoting transnational dialogue among judiciaries

November 16-18, 2022

Report

About the WIPO Judicial Institute

Established by the World Intellectual Property Organization (WIPO) in 2019, the WIPO Judicial Institute collaborates with other relevant WIPO sectors to support the efficient and effective judicial administration of intellectual property (IP), aligned with the national legal traditions, and economic and social circumstances, of Member States.

Information on WIPO's work relating to judiciaries is available on the WIPO website at www.wipo.int/about-ip/en/judiciaries.

Acknowledgments

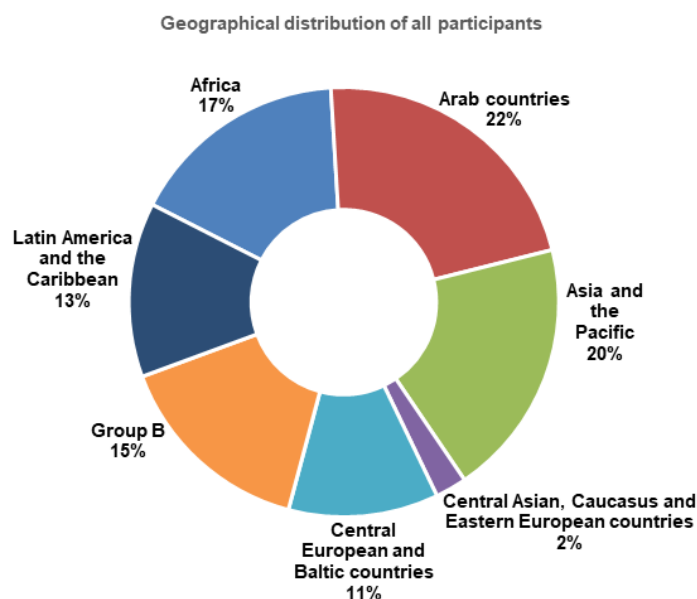
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2022 WIPO Intellectual Property Judges Forum Promoting transnational dialogue among judiciaries

The annual WIPO Intellectual Property Judges Forum aims to provide a platform for judges from across the globe to exchange their expertise on the most pressing intellectual property (IP) challenges raised by accelerating innovation and the increasingly transnational use of IP. The participants observe judicial approaches of other countries and gain insight to strengthen their own courts' analyses. The Forum is part of WIPO's work intended to empower judiciaries to fulfill their vital role in ensuring that IP, innovation and creative ecosystems in Member States are balanced and effective.

The 2022 edition of the Forum was conducted in a hybrid format (both in-person at WIPO Headquarters in Geneva, Switzerland, and virtually) from November 16 to 18, 2022. This year, 381 judges from 99 countries and three regional courts participated in total. Of these, 131 judges from 44 countries and one regional court attended in person. Thirty-seven speakers from 32 jurisdictions participated as moderators or panelists. All judges spoke in their personal capacity, expressing their own opinions and views and not necessarily those of the Secretariat or of the Member States of WIPO.



The theme of this year's program was "Judging in an ever changing world". Accordingly, the program focused on the impact of new technologies on areas of IP such as patents and copyright, as well as on judicial remedies. In response to the interests of judges expressed in designing the program, a particular emphasis was given to issues related to the grant of injunctions, whether in the form of provisional measures or final remedies, and in the context of infringement in a globalized, digital world. For the first time, the program also invited two special guest speakers to share their fascinating work on artificial intelligence (AI) and its role in judicial decision making.

After two years of holding the Forum virtually, the collegiality among judges meeting each other in person again in the WIPO Conference Hall was palpable. At the same time, the online exchange and understanding fostered during the pandemic facilitated the virtual presence of the wider network of the international IP judicial family to also be felt. Virtual participants and the Zoom chat were visible in the WIPO Conference Hall, allowing virtual and in-person attendees to engage together and contribute to the proceedings. The responses received to a survey indicated strong appreciation for the comparative information and insight shared on questions and challenges that are relevant to IP judges across jurisdictions.

The Forum was conducted in six languages (English, Arabic, Chinese, French, Russian and Spanish) with simultaneous interpretation. The program and the list of participants may be accessed on the Forum webpage at <http://www.wipo.int/judgesforum2022>.

The 2023 WIPO Intellectual Property Judges Forum will take place at WIPO Headquarters in Geneva, on November 15 and 16, 2023.

Summary Report

The following summary reports on the discussions which took place during the Forum, and does not reflect the views of any individual participant or WIPO. As the discussions were limited to certain aspects of a small number of sample cases, this summary does not represent the state of the law of any jurisdiction.

All participants took part in their personal capacity.

Opening

The 2022 WIPO Intellectual Property Judges Forum was opened by Mr. Daren Tang, Director General of WIPO, and by Justice Annabelle Bennett, Chair of the WIPO Advisory Board of Judges.

The Director General welcomed the judges participating in person and remotely from around the world. He observed that the Forum was meeting at a time of global uncertainty, in which the world is facing a combination of energy, inflationary and supply-chain pressures, the existential challenge of climate change, and other, geopolitical stresses that are making the work of the international community more complex and impacting economies and societies across the globe. Against this backdrop, the Director General observed that support for IP, innovation and creativity is critical, as new ideas and solutions have key roles to play in easing global pressures and building a more sustainable world.

The Director General was therefore not surprised that ever-more economies and enterprises are turning to innovation-driven growth and that IP filings continue to increase both at the global level and within WIPO's systems. He observed that new engines of IP and innovation are emerging around the world, as evidenced in WIPO's Global Innovation Index. At the same time, new technologies continue to progress, with digital-related innovation growing 170 percent faster than all other patent categories over the past five years.

The Director General saw the work of the judiciary as taking on greater significance in this context, in a number of ways. First, societies are increasingly looking to courts to provide clear and effective answers on complex cases with far-reaching implications. Second, recognition of the role of judiciaries upholding IP systems is growing everywhere. The Director General acknowledged the coming to fruition of the Europe's Unified Patent Court (UPC) as a reflection of the increasing importance that countries are placing on the specialized adjudication of IP disputes. At the same time, he reported on the strong impetus by countries of all sizes and at all stages of development to foster the work of their courts and tribunals. Third, the Director General noted there is no let-up in the demand on court dockets, with increases in case numbers in a number of jurisdictions, despite international variations.

The Director General explained that the 2022 Forum's theme of "Judging in an Ever Changing World" responded to this range of challenges and opportunities, to explore how new technologies are impacting the technical aspects of IP law. He emphasized that the Forum was not designed to be theoretical in nature, but to feature real decisions presented by judges from diverse legal, cultural, and linguistic backgrounds. This practical approach aligns with WIPO's strategic mission to support Member States to use IP as a powerful catalyst for job creation, investments, business growth and, ultimately, economic and social development.

The Director General concluded by expressing his hope that WIPO's unique role as a convener of transnational judicial dialogue will enable navigation of the rapidly evolving global environment together. He also transmitted WIPO's deep gratitude to the members of the WIPO Advisory Board of Judges, as well as to the Forum speakers and participants, whose engagement helps to create a truly global community of IP judges.

Justice Bennett delivered her welcome to the participating judges in her capacity as Chair of the WIPO Advisory Board of Judges. She expressed her delight in being able to come together at the Forum, both in person and virtually, to connect and reconnect with judicial peers. Justice Bennett underscored the Director General's description of the crucial role of the judiciary in the IP ecosystems, as the efficient, effective and appropriate adjudication of IP disputes enables IP rights to be meaningful. Justice Bennett reiterated that each judge is bound by the distinct law and jurisprudence of their own jurisdiction, and saw the value of the annual Forum to be in giving judges the opportunities to come together to freely discuss the challenges they encounter and how they deal with those challenges. Justice Bennett expressed her belief that this dialogue is extremely beneficial because, while making their own independent decisions, it is very useful to learn from the experiences of judges in other jurisdictions. In her view, the Forum enables judges to have the world at their fingertips by having access to global jurisprudence and being able to draw on the vast network of judges as a resource for information.

Recalling the Director General's vision of WIPO's role in promoting understanding of the benefits of IP for everyone, Justice Bennett expressed her belief that the WIPO Judicial Institute's work and the Forum in particular are instrumental to achieving this outcome. This was the reason why the Forum program places a strong emphasis on remedies, including provisional measures and injunctions, because these are the outcomes of the work of judges. She noted that the conversations on patents, trademark and copyright would be relevant to judges everywhere irrespective of the composition of their caseload, as these would highlight the fundamental principles and pressures that apply to IP proceedings in general, and the challenges that are increasingly shared by judges across the world due to the evolutions described by the Director General. The discussions would also enable judges who have not yet decided particular kinds of IP cases to be prepared for when those disputes arrive in their courts in future.

Justice Bennett concluded by reiterating the professionally and personally rewarding experience of participating in the Forum, and saying that she looked forward to reuniting and expanding the family of the international IP judicial community created by the Forum.

Session 1: Role of the Judiciary in Promoting Balanced and Effective IP, Innovation and Creative Ecosystems

The session opened with an overview of the pressures faced by the judiciary in handling contemporary IP disputes, whether from the IP aspects of new technologies or other societal phenomena such as the global pandemic and social media. The panelists drew on the practicalities of being a judge in IP cases to share how they deal with these pressures in order to properly fulfill their judicial role as part of the IP ecosystem.

To begin with, the panel acknowledged that policy questions are the domain of the legislature and that the role of courts is not to drive policy. Even though court decisions may have manifold and unintended policy consequences, judges are required to decide the case before them; some speakers opined that judges may require training in order not to be influenced by public opinion. At the same time, the panelists agreed that policy implications nonetheless arise in judicial decision making. For example, judicial decision making regularly requires courts to take into consideration the public interest and, in certain jurisdictions, courts may also exercise *suo moto* powers as part of the adjudication process in public interest litigation.

The panel also observed that judges are routinely required to weigh competing interests, and addressed the role of balance of convenience analyses, proportionality concepts and judicial discretion at different stages in IP proceedings, with differences in the application of judicial discretion across jurisdictions.

Differing approaches could result in varying outcomes in IP cases. For example, a presumption in favor of granting an injunction when an IP right is found to be valid and infringed operates in some jurisdictions, while in others, public interest considerations play an important role in weighing the grant of injunctive relief. It was noted that, in a number of countries, a high volume of IP cases are decided at the interim phase, thus accentuating the challenge of striking an appropriate balance for the parties and for the public interest. Further nuances for judges in serving their judicial functions were observed, such as the distinct perspectives of specialized IP courts compared to generalist appellate courts that hear appeals from the former, and the role of part-time judges who also participate in the private sector. In addition, the session discussed the tension between IP and competition laws. The panelists exchanged views on the effect of publication of statistical data intended to evaluate the performance of a court or a judge, which can have the effect of contributing to forum shopping by litigants.

In conclusion, the panel recognized the importance of the objective of providing legal certainty for the users of the IP system, rendered through timely proceedings and considered decisions, in order for the judiciary to serve its role in promoting balanced and effective IP and innovation ecosystems.

Reference judgments

- Supreme Court of India [2019]: [Monsanto Technology LLC v Nuziveedu & Ors., 3 Supreme Court Cases 381](#)
- High Court of Delhi, India [2015]: [Merck Sharp & Dohme Corpn. v Glenmark Pharmaceuticals, FAO\(OS\) 190/2013](#)
- High Court of Delhi, India [2015]: [Vifor International Ltd. v Competition Commission of India, W.P.\(C\) 11263/2022](#)
- Intellectual Property Appellate Board, Chennai, India [2013]: [Bayer Corporation v Natco Pharma Ltd. & Ors., OA/35/2012/PT/MUM](#)

Special Guest Speakers: Artificial Intelligence and its Role in Judicial Decision Making

This segment started with an audience poll on the participating judges' readiness to allow AI systems to input into judicial decision making, categorized as respondents' willingness to adopt a) higher-level decision support; b) augmented machine support; or c) highly automated settings. The poll results indicated that half of the respondents believed that decisions are to be made primarily by humans; some 43% were inclined toward using AI to generate recommendations or provide diagnostic analytics; and 7% of the respondents were open to allowing AI to make decisions, with humans acting as guard rails only.

Judge Abeline Dorothea (Dory) Reiling presented an overview on the use of AI in judicial decision making. At the outset, she explained the broadly accepted definition of AI as "simulation of intelligent behavior in computers," and includes machine learning and deep learning. Machine learning, which is more relevant in the current context of judicial decision making, has the following functions: to organize information through pattern recognition; to draw conclusions through the recognized patterns; and to make predictions.

Judge Reiling explained the different kinds of technology that could be applied by courts depending on the kinds of cases before them. For example, cases on title would benefit from AI that is able to structure information, whereas notarial cases or cases that conclude in settlements would benefit from solution explorer technology. Finally, cases that are ultimately decided by judges may benefit from advice and prediction technology, and assistance with research and analytics. The already proven technology used in e-discovery procedures was taken as an illustration, where supervised machine learning may be used to search and organize potential evidence.

"Predictive justice", while potentially providing greater predictability in outcomes, presents challenges such as ensuring the quality and correctness of judgments in the repository on which machine learning is based; preserving the security of data; protecting against the risk of error in the data; and correctly training the algorithm. In a recent published study on the topic, it was claimed that algorithms, by finding patterns, could forecast judicial outcomes of the European Court of Human Rights with an accuracy rate of 79%. The study also found that judicial decision making is significantly affected by the stimulus of the facts.

Judge Reiling referred to the "European ethical Charter on the use of AI in judicial systems and their environment", which outlines five principles: respect for fundamental rights; non-discrimination; quality and security; transparency, impartiality and fairness; and under human control. In relation to "non-discrimination", the potential risks were bias in judges, laws, programmers, data and algorithms. As to "transparency", Judge Reiling explained that, in Europe, the use of AI in judicial decision making must be disclosed. Under this Charter, use of AI should preclude a prescriptive approach. Accordingly, an AI technology may not decide on its own and humans must decide what to do with the results produced by an AI.

Judge Reiling concluded by referring to a number of European initiatives intended to bring AI under some human control, as well as the challenges related to issues such as judge profiling.

Professor Andrew Christie introduced the reasons behind his co-authored study on "Automatic Resolution of Domain Name Disputes". He explained that the study was enabled by the availability of data in the published decisions in domain name disputes administered under the Uniform Domain Name Dispute Resolution Policy (UDRP) by the WIPO Arbitration and Mediation Center. The data was conducive to study because it is structured, and there was a lot of it – more than 30,000 publicly available decisions.

In addition, the outcomes of the domain name disputes provided a jurisprudentially philosophical reason behind the study. The majority of cases were undefended, and whether the case is defended or undefended, the majority of the outcome was success for the complainant. In considering how to make the process more efficient, Professor Christie at first considered treating undefended cases as a success for the complainant, and achieving a type of “rough justice” that would save a lot of panelist time. However, this carried the risk of complainants filing unmeritorious complaints and gaming the system. Accordingly, in designing the study, Professor Christie was most interested in identifying potential possibilities for the allocation of the most important kind of resource – human intellect – to the cases that need the closest attention.

The study used decisions rendered in English, which accounted for 90% of the total number of decisions. Five Natural Language Processing (NLP) tools were trained, developed and tested on all of the text of the decision except for the panelist’s reasoning and conclusion. Importantly, the text used contains the panelist’s summary of the facts and the parties’ pleadings. In the absence of the parties’ own submissions, which are not public, the latter is a proxy for what the parties actually argued. The study evaluated the power of the NLP tools on accuracy, precision, recall, and weighted average of precision and recall. It found that all of the tools were very good at identifying the likely outcome of a decision based on the summary of the facts and the pleadings.

Professor Christie concluded by noting a practical application for this type of AI – triaging cases for allocation of decision-makers. For example, it would be most efficient to allocate the most experienced panelists to undefended UDRP cases that are forecast to fail, since the facts and argument in these cases do not justify the complaint succeeding despite them not being contested. Thus, an AI tool could be used to ensure that the most important, most valuable, and scarcest resource in judging – human intelligence – is applied where it is most needed.

The ensuing discussion highlighted the risks involved in the use of AI, including the risk of discrimination in particular, as well as examples of contexts in which participants could envision the use of AI assisting in decision making. The segment concluded by observing that the use AI use should not be contemplated to resolve all problems, and with a general agreement that AI is a tool to assist but not to make the decisions.

Reference articles

- Bell, F., Bennett Moses, L., Legg, M., Silove, J. and Zalnieriute, M. (2022). [*AI Decision-Making and the Courts: A Guide for Judges, Tribunal Members and Court Administrators.*](#) [Australasian Institute of Judicial Administration](#)
- Christie, A. (2021). Automatic Resolution of Domain Name Disputes. [*Natural Legal Language Processing Workshop 2021, 228-238*](#)
- Reiling, A.D. (2020). Courts and Artificial Intelligence. [*International Journal for Court Administration, 11\(2\), 8*](#)

Session 2: Patents and New Technologies

The session began by noting the global history of once-new technologies that can be read in the history of patents, such as those related to steam-powered river boats (1780s), undersea cables (1860s), the telephone (1870s), azo dyes (1880s), radio telecommunications (1911), antibiotics (1960s), genetic engineering (beginning 1980s), and now growing numbers of patents relating to AI.

The panelists shared recent significant decisions from their jurisdictions on new technologies including cases relating to AI systems. An element of patent law that arose repeatedly through the discussion was the threshold for patentability. In the United States, a landmark decision relating to the patent eligibility of software-related patents was handed down by the U.S. Supreme Court in *Alice Corp v CLS Bank International*. Since then, the U.S. Patent and Trademark Office (USPTO) has established guidelines on subject matter eligibility to assist examiners and administrative patent judges in applying the law across a range of technologies. In discussion with participants from other jurisdictions, it was observed that the applicable law in this area is nuanced and challenging, and can lead to differing results between countries.

A number of the panelists referred to litigation involving the AI system named DABUS, named as inventor in patent applications initiated by the machine's creator in multiple jurisdictions, seeking review of negative patent office decisions. In the United States, a patent application listing the AI system as the sole inventor was rejected by the USPTO for not providing the name of an inventor. At both the District Court and U.S. Court of Appeals for the Federal Circuit, the Office's decision was affirmed. It was found that the statute as drafted by the legislature was unambiguous, and required the inventor named in the application to be a person. A parallel case was heard in Australia, where an opposite outcome was at first obtained. This decision, however, was overturned on appeal by a Full Bench of the Federal Court of Australia, which similarly concluded that the proper statutory construction of the legislative scheme required inventorship to originate in a person. An active discussion among both panelists and participants explored various questions raised by this litigation. Some judges commented on the distinction between the judicial role and the legislative role that was highlighted by this string of cases.

Looking to the future, several judges shared their perspectives on what the possibility of AI inventorship could mean for the fundamental purpose and operation of the patent system. Some judges raised questions regarding identification of the inventor, since AI currently still requires some human input. For inventions not created by but involving an AI system, it was noted that, in the legal tests for inventive step, the task of identifying the person skilled in the art may be affected if that hypothetical person is to be assumed to have access to enhanced knowledge via the use of AI systems. Challenges could also arise at other steps of the patentability analysis, including in sufficiently disclosing the content of an AI system at the relevant point in time, to meet the disclosure requirement. Some judges considered the question of how the standard of patents granted would be affected. Potential impacts of AI inventorship on the interface of IP with other areas such as competition law were also observed, including implications for the concept of IP as a human right.

Other examples of patent cases involving new technologies were also shared. For instance, a case involving patentability of a computer involved in poker machines demonstrated that the application of existing tests for patentability of computer-implemented inventions is not yet fully settled in Australia. The questions addressed at trial were whether the claim was for a mere business scheme (not patent-eligible subject matter) or was a manner of implementation within the computer (patentable). However, different levels of the court hierarchy analyzed the questions and the applicable law in different ways, and reached contradictory outcomes, with the final resolution of the case still pending. Further, a biotechnology case from Brazil concerning the development of a new technique to obtain transgenic tobacco plants with reduced tobacco content, in which the Federal Court found the invention to not be obvious, provided an opportunity to examine the test for inventive step in Brazil. Finally, in Georgia, the procedural challenges arising in a recent case involving claims for both revocation of a patent and compensation for infringement were shared. In the context of Georgia's bifurcated judicial system, in which administrative courts have jurisdiction over validity proceedings while civil courts hear infringement proceedings, the Supreme Court heard a jurisdictional dispute that would have important implications for the

patent case due to the different powers of the courts. For instance, the administrative court employs inquisitorial procedures and has the power to request new evidence to investigate the patent claim, and to call for its own expert evidence; whereas the civil court conducts adversarial proceedings and relies on the expertise presented by the parties. The types of interim measures that can be granted also differ between the courts.

The discussion canvassed differing perspectives on the significance of the effects of AI on the adjudication of patent disputes, and the patent system more generally. One view was that new technologies can sometimes present existing legal questions in new clothes. From another perspective however, AI could be seen to signal a fundamental paradigm shift from previous technologies, because the questions it raises extend beyond patentable subject matter, to the notion of AI being responsible for creating inventions complying with patentability standards.

Reference judgments

- Federal Court of Australia [2022]: [Commissioner of Patents v Thaler \[2022\] FCAFC 62](#)
- [High Court of Australia \[2022\]: Aristocrat Technologies Australia Pty Ltd v Commissioner of Patents \[2022\] HCA 29](#)
- Federal Court of Rio de Janeiro, Brazil [2016]: [North Carolina State University v Instituto Nacional da Propriedade Industrial \(INPI\), Case number 0162125-81.2016.4.02.5101/RJ](#)
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- U.S. Supreme Court [2014]: *Alice Corp v CLS Bank International*, 573 U.S. 208
- U.S. Supreme Court [2007]: *KSR Int'l Co v Teleflex Inc*, 550 U.S. 398

Session 3: Copyright and New Technologies

This session explored the different ways in which copyright has dealt with new technologies through the lens of decisions that have been significant in applying national copyright laws in the modern digital era, including recent examples of cases involving copyright protection of AI-generated works. It also touched upon the practical challenges in assuring the availability of accessible formats of copyright works for persons who are blind, visually impaired, or otherwise print disabled.

In canvassing the foundational cases from the jurisdictions represented, the discussion focused on two aspects: works reproduced on the internet and the protection of software. In the former category, an example was presented of a case from the Dominican Republic, where the Supreme Court analyzed, among other issues, the reproduction of a work publicly available on a website that had no indication of the origin of the work or of the author. In relation to the copyright protection available for computer software, the different approaches applied to each of the software components were explored. For example, the first judicial decision on this topic issued by the Supreme Court of Colombia was presented in which it confirmed that, generally, copyright subsists in the source and object codes of software because they are considered original and creative expressions of ideas. However, the situation is less clear for the graphical user interface and the design elements, for which copyright protection may be possible if originality and creativity can be shown. Other

elements of software, such as algorithms, commands and program functionality, may not be subject to copyright protection on the basis that they are ideas or do not satisfy the requirements of creativity and originality.

The discussion also addressed the interface between the rights of persons who are blind, visually impaired, or otherwise print disabled to have access to literary works and the requirement of authorization from the copyright owner to convert works into formats suitable for the use of such persons. This debate arose in the context of a constitutional challenge to the Copyright Act of South Africa, in which the Constitutional Court confirmed that, in the absence of exceptions to enable access to copyright works by persons with visual and print disabilities, the requirement of authorization in the Act infringed the constitutional rights of persons with disabilities. Persons with these disabilities should not suffer discrimination by reason of the requirement of authorization that is not endured by persons without disabilities. It was noted that new technologies to provide more effective solutions to ensure the availability of literary works in accessible formats are being developed, and their availability should not be limited by the discriminatory application of the copyright legislation.

Finally, the panel discussed the challenging issue of copyright protection of AI-generated works. This matter was illustrated by reference to a case in China, where a district court determined that an article created by a computer software complied with the legal requirements for copyright protection. Part of the court's reasoning in that instance related to the originality attributed to the creation process and preparatory work conducted by the group of persons who created the software, which reflected their personal choices, decisions and skills. During the panel's discussions, it was observed that human input into machine-generated work continued to be relevant in defining copyright protection. It was noted, however, that courts in many jurisdictions have not yet confronted this situation. In Türkiye for example, the existing jurisprudence relating to the assessment of originality was described, but the way in which it would be applied to AI-generated works remained to be determined by the courts.

Reference judgments

- Nanshan District People's Court, Shenzhen, Guangdong Province, China [2019]: [Shenzhen Tencent v Shanghai Yingxun, Case No. Yue 0305 Min Chu No. 14010](#)
- Supreme Court of Colombia, Civil Chamber [2021]: [Carlos Enrique Estupiñán Monje, Softpymes SAS and Germán Alberto Restrepo Fernández v Pablo Enrique, Fernando Otoy Domínguez, and Sistemas de Información Empresarial SA -SIESA-, Case No. SC3179-2021](#)
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- Court of Cassation of Türkiye, Grand Chamber [2021]: Case No. 2021/1228

Session 4: Provisional Measures in IP Disputes (Part I)

This session presented a variety of perspectives on provisional measures in IP cases, which are required by Article 50 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In national laws, provisional measures for IP disputes are regulated as part of the IP legislation in certain jurisdictions, and as part of general procedural law applicable to all civil and commercial disputes in others.

The panel discussion concentrated on preliminary injunctions, intended to preserve the status quo, pending full adjudication of the dispute. The discussion covered the requirements for granting preliminary injunctions, the considerations specific to ex parte injunctions, the challenges of dealing with complexity of technology and urgency, and the frequency of preliminary injunctions.

A common requirement for the grant of preliminary injunctions is urgency, in order to avoid an imminent harm to the rights of the applicant. In IP infringement disputes, courts first review the entitlement of the party applying for the preliminary injunction, which may include IP owners, exclusive licensees, and nonexclusive licensees authorized by the IP right holders, to exercise the right to sue. The court will ordinarily consider the validity of the IP right claimed. The panel shared that it can be challenging for courts to address the validity of an IP right in a preliminary proceeding. It was observed that IP rights that have not attracted attacks on validity after a reasonable duration, or that have been found to be valid after opposition or revocation proceedings, may carry greater weight in deciding an application for a preliminary injunction.

In the discussion it was observed that the stronger the prima facie case of infringement, the more compelling was the basis for the grant of a preliminary injunction. The standards used to test the existence of a prima facie case in favor of a preliminary injunction are different among jurisdictions. It was noted that parties must disclose all material facts to the court, at the risk of having the decision granting provisional measures set aside. The panelists shared different experiences, drawn from their jurisdictions, indicating the extent of the evidence required by the court in determining whether a prima facie case had been made out. While one panelist raised the difficulty of deciding on requests for provisional measures that are usually made on the basis of limited evidence, another panelist had the experience that all relevant evidence is usually made available in the preliminary proceedings, with little further evidence added at trial.

The panel noted that the grant of a provisional measure is a discretionary decision, requiring a balance of the potential harms that would result from the grant or denial of the provisional measure. In exercising this discretion, the court considers the tension between rights of the plaintiff and those of the defendant, as well as the appropriate balance that should be struck between IP rights and other rights (such as the defendant's right to be heard), and the rights of consumers. In terms of the rights of applicants, preliminary injunctions require a reasonable apprehension of irreparable and imminent harm to the applicant if the injunction is not granted, and applicants must have no other remedy. At the same time, courts are also required to assess the potential damage that may be inflicted on the defendant, bearing in mind that it may not be possible to secure a full restoration of the defendant's commercial position even if the defendant prevails at trial. In order to lessen the risk of error, many jurisdictions provide for cross-undertakings in damages to protect the defendant.

Preliminary injunctions may be granted in ex parte proceedings, in particular when any delay would cause irreparable harm to the IP owner. However, this must be balanced against the right of the defendant to be heard. In one jurisdiction, measures to achieve this balance included the possibility of registering protective letters that serve as preemptive statements on patent invalidity or patent non-infringement in an electronic register, or the requirement to submit any pre-trial correspondence between the parties, which may shed light on the position of the unrepresented party in ex parte proceedings. The paramountcy of the duty of the applicant in ex parte proceedings to make full disclosure of all the evidence available to it relevant to the proceedings enjoyed emphasis.

The discussion revealed differences in the frequency of preliminary injunctions in IP disputes. In some jurisdictions, preliminary injunctions were ordered frequently; whereas in other jurisdictions, preliminary injunctions were granted rarely in IP cases, mostly limited to cases

involving counterfeiting or public health risks. Preliminary injunctions were found to be especially rare in patent litigation, in the light of the complexity of the technology involved and the requisite time for the determination of patent validity and infringement. One panelist shared that preliminary injunctions arising in the context of trade fairs, or involving the early entry of generic pharmaceuticals into the market near the end of a patent term, are two examples of situations in the field of patents in which preliminary injunctions are granted more frequently.

In conclusion, the temporary injunction was found to have considerable utility in IP litigation, in certain cases resolving the dispute altogether. It was noted that the value of provisional measures might be greater in jurisdictions where proceedings on the merits may take many years to resolve.

Reference judgments

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- Court of Appeal, Ilorin Judicial Division, Nigeria [2015]: [Gallaher Ltd. v British American Tobacco \(Nig.\) Ltd & Ors, 13 NWLR \(PART 1476\) 325 / \(2014\) LPELR-24333 \(CA\)](#)
- Provincial High Court of Alicante (European Union Trademark Court), Spain [2022]: [Decision No. 31/22](#)
- Court of Justice of the European Union [2022]: [Phoenix Contact GmbH & Co. KG v HARTING Deutschland GmbH & Co. et al., Case No. C-44/21](#)

Session 5: Provisional Measures in IP Disputes (Part II)

Following on from the Session 4 discussion on provisional measures, it was observed in Session 5 that the requirements for granting a preliminary injunction are conceptually similar across many jurisdictions, although they may be expressed in different terms such as likelihood of success on the merits of the case (*fumus boni iuris*) and urgency/danger in delay (*periculum in mora*); or *prima facie* case, irreparable harm if the injunction is not granted, and the balance of convenience.

Against that background, this session covered several elements that arise for consideration of courts in applications for provisional measures, such as the standard of proof required, bonds or cross-undertakings in damages to be provided by applicants, considerations of extra-territorial effects, and the role of public interest and proportionality in weighing the grant of provisional measures.

When hearing applications for provisional measures, courts must consider whether the evidence presented by the applicant is sufficient to justify grant of the measures. One panelist shared the challenge faced by judges when they are presented with insufficient evidence or hearsay evidence in the application for provisional measures.

A cross-undertaking in damages, also referred to as a bond in some jurisdictions, is an undertaking required from the applicant for a provisional measure as security for any injury that may be suffered by the respondent as a result of the grant of a provisional measure that is ultimately found to be improper at hearing. The panel agreed that this requirement is commonly ordered in their jurisdictions, with some panelists observing that bonds are more frequently requested from foreign applicants who do not have commercial or other financial links in the jurisdiction.

On the topic of territorial considerations, the discussion began from the basis that IP rights are territorial and take effect in principle in the State in which they have been granted. In certain cases, however, applications for provisional measures may raise questions regarding territorial jurisdiction and extraterritorial impact that need to be considered by courts. For example, in the case of online IP infringements, provisional measure may take the form of ordering internet search engines to de-index IP infringing websites at a global level. On the jurisdictional question, one panelist noted that if the online activity has sufficient nexus to the local jurisdiction, then the party is potentially subject to that court's jurisdiction. Some panelists were of the view that a court can grant an injunction with extraterritorial effect, i.e. enjoining conduct anywhere in the world, when it is necessary to ensure the injunction's effectiveness. It was noted, that while a court may issue an injunction with worldwide effect, a court in another State may have jurisdiction over the same subject matter and the same litigants, and may grant a parallel order that has the effect of negating the provisional measure in the affected jurisdiction.

The discussion also raised the question of whether a non-party, for example an internet search engine, may be subject to orders for injunctive relief. One panelist noted that injunctions are commonly granted against third parties in some legal areas, for example in cases of online infringement where orders compelling internet service providers to identify subscribers engaging in infringing conduct are increasingly used.

The panel acknowledged the importance of proportionality in delineating provisional measures, including in the duration of the measure. The panelists observed that provisional measures can at times take on a long duration and in effect amount to a final determination of the action. Such situations created a danger that provisional measures effectively substitute for final orders, despite the application not satisfying the test for a permanent injunction, which requires a more robust examination of the merits. One panelist highlighted the value of effective judicial case management to expedite proceedings on the merits, to mitigate this risk.

Other topics discussed by the speakers included considerations regarding the parties' financial positions and potential imbalance in determining the amount of the bond or third-party funding; the effect of provisional measures granted in countries governed by regional agreements, such as the Bangui Agreement Relating to the Creation of an African Intellectual Property Organization (OAPI); as well as the interplay between the roles of customs authorities and of the courts, including the role of emergency judges in reviewing decisions made by customs authorities, in preventing the entry of IP infringing goods into the country.

Reference judgments

- Commercial Court of Cotonou, Benin [2021]: [Société Phoenix International Sarl v Chitou Zoul-Fadil et al, No. 065/21/CJ/SI/TCC](#)
- Supreme Court of Canada [2017]: [Google Inc. v Equustek Solutions Inc., 2017 SCC 34](#)
- Jiangsu High People's Court, China [2008]: [Jiangsu Baite Import and Export Trade Co., Ltd. and Jiangsu Huai'an Kangbaite Carpet Co., Ltd. v Mr. Xu, Case No. SMSZZ No. 71](#)
- Third High Court, First Judicial District of Panama [2019]: Case No. 8-08-01-10-3-214402019
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Session 6: Injunctions in the Digital Environment

The session began by addressing the technological complexity and the transnational nature of infringement in the digital environment. The territorial nature of IP rights was reiterated, while observing that this can give rise to special difficulties in the digital age as courts are

required to determine the location of the allegedly infringing acts. The use of injunctions presents further complications, for example because the remedy granted will be territorially restricted to the jurisdiction of the court and may be ineffective against infringing acts taking place outside the territory; in other circumstances, a court may grant an injunction with extraterritorial reach (e.g. global injunction), overlapping in jurisdiction with courts of other countries. As to the technology, it was noted that the systems under consideration in such cases can be complex and change quickly, not only due to continuing development of the technology itself, but also because infringers adapt to orders against them by moving servers or location, and use technological measures to evade restrictions. As a result, the orders made by courts are correspondingly complex. For example, website blocking orders directed to internet service providers (ISPs) whose services are used by a third party to infringe an IP right must specify not only the specified URLs to be blocked, but also the detailed technological steps that the ISPs must take.

Often, after a specific website is blocked, a new website with a similar name and function appears. One question that arises for courts is whether a website blocking order should address only the currently infringing URLs, with the possibility of broadening the order to further infringing URLs in future; or whether the order granted in the first place should be effective to cover copycat websites, thus avoiding the need for a right holder to return to court. A relatively recent development is the use in some countries of dynamic blocking injunctions, which require an ISP to block access to not only websites under specified domain names or URLs found to be infringing, but also to mirror websites accessible through other domain names or URLs, where the sole or predominant purpose of the latter is to facilitate access to the infringing websites, as identified by the right holders on a regular basis.

The panelists shared examples of significant cases and approaches to the use of injunctions for online infringement from their jurisdictions, for example on determination of the territorial location of infringement, the availability of website blocking orders against ISPs, and on costs. The role of ISPs in the court proceedings were touched on, as well as the partial confidentiality applied to orders where publication of the technological measures to be taken would allow the infringer to circumvent the order.

The discussion illustrated that a number of jurisdictions have already utilized dynamic blocking injunctions. The considerations weighed by courts in issuing such orders were shared, including questions of necessity and proportionality; whether such an injunction would be sufficiently clear and specific; and whether it would be in breach of procedural safeguards. Examples of operational safeguards set by courts to ensure proper implementation of the orders were also shared. In one jurisdiction, a number of illustrative factors to identify “rogue” websites had been articulated including, *inter alia*, elements related to whether the primary purpose of the website is to commit or facilitate copyright infringement, the flagrancy of the infringement or facilitation thereof, whether there is inaction after receipt of take down notices, and whether the website is subject to a blocking order issued by the court of another jurisdiction on the basis of copyright infringement.

The session also covered the development of “geo-blocking” injunctions (restricting access to online content based on the user’s geographical location) and “global” injunctions (blocking access to the infringing website from any location). In two cases, involving an application for an order with global effect to remove unlawful content and an application to require a third party to disclose identifying information about unknown infringers, the court considered questions such as the territorial location of the infringing activity as well as of the harm suffered; the nexus with the court’s jurisdiction; and public interest considerations such as freedom of speech and privacy. In other examples of online infringement of copyright and trademark, the challenges for courts in dealing with high volumes of cases and lack of cooperation by third parties were illustrated.

The use of measures other than website blocking injunctions were mentioned. These may include mandatory publicity orders, the grant of which requires weighing a number of factors, including the deterrent effect in both the immediate case and generally; proportionality; effectiveness; and utility of other remedies. Although it is uncommon that the operators of an infringing website are identified, in one proceeding the individuals were successfully convicted and sentenced to prison terms, in addition to payment of damages. In a criminal case from a different jurisdiction involving websites containing pirated content, the measures ordered by the court also included a search of the operator's homes and preliminary detention of the operators; confiscation of the electronic equipment used; blocking of the relevant domain names, destruction of the website content, and transfer of the website addresses to the aggrieved parties; and dissolution of the company through which the websites were operated.

Throughout the discussion, the role of courts in striving to strike a fair balance between fundamental interests arose, whether between the parties, or in considering the proper limitations that could be placed on rights such as freedom of expression and the public interest in ensuring open access to the internet. A number of speakers and participants acknowledged national debates about the risk of "over blocking" access to the internet, particularly in cases involving neutral ISPs. The parameters established in some countries to protect against this risk were shared, for example by identifying whether websites are primarily intended for distributing infringing material. These scenarios illustrated the continuing need for ensuring proportionality in blocking orders as injunctions.

In concluding, it was observed that there were several common aspects among the national approaches shared during the session, but that there are also areas where the challenges faced by courts and the national legal responses have been different due to the unique context of each jurisdiction.

Reference judgments

- High Court of Delhi, India [2019]: [Swami Ramdev and Anor v Facebook, Inc and Ors, CS \(OS\) 27/2019](#)
- High Court of Delhi, India [2019]: [UTV Software Communication Ltd and Ors v 1337X.to and Ors, CS \(COMM\) 724/2017](#)
- High Court of Delhi, India [2022]: *Dabur India Limited v Ashok Kumar and Ors*, CS (COMM) 135/2022
- Supreme Court of Justice of the Nation, Mexico [2017]: Second Chamber, 2017, D.A. 1/2017, Alestra, S de R.L de C.V.
- First Criminal Court for Customs, Tax, IP and Environment of the Department of Lima, Peru [2018]: *Disney Enterprise Inc DEI, Sony Pictures Television Inc, Universal City Studios LLC and Others represented by the Motion Picture Association of America v Manrique Aguero and Others*, Case No. 00527-2018
- Patent and Market Court of Appeals, Sweden [2020]: *AB Svensk Filmindustri et al. v Telia Sverige AB*, Case No. PMT 13999-19
- Court of Appeal of England and Wales, United Kingdom [2002]: *Menashe Business Mercantile Ltd v William Hill Organisation Ltd* [2002] EWCA Civ 1702
- High Court of England and Wales, United Kingdom [2013]: [Paramount Home Entertainment International Ltd v British Sky Broadcasting Ltd](#) [2013] EWHC 3479 (Ch)
- Supreme Court, United Kingdom [2018]: [Cartier International AG v British Telecommunications Plc](#) [2018] UKSC 28
- Court of Appeal of England and Wales, United Kingdom [2021]: [Tuneln Inc v Warner Music UK Ltd and Anor](#) [2021] EWCA Civ 441

Work of the WIPO Arbitration and Mediation Center

The WIPO Arbitration and Mediation Center is a part of WIPO's IP and Innovation Ecosystem Sector, and provides a global, independent and neutral platform for alternative dispute resolution of all types of IP and innovation-related disputes. The Center is increasingly used by innovators and SMEs. Its services range from mediation, to arbitration and expert determination. An [overview](#) of the different areas of the Center's work was provided.

The Center is very active in domain name disputes and provides services under the Uniform Domain Name Dispute Resolution Policy (UDRP), which applies to the global Top-Level Domains such as .com and over 80 country code Top-Level Domains. WIPO mediation and arbitration cases relate to patent disputes, including mechanical patent disputes and large disputes in the areas of life sciences, biotechnology and pharmaceuticals. There is also an increasing number of cases arising from the ICT sector, in particular in relation to [standard essential patents](#) (SEPs).

The users of the Center continue to diversify; there is an increasing number of cases involving parties from Asia and Latin America. The source of the cases has also changed. Whereas, historically, mediation and arbitration cases arose from contractual clauses, for example in license agreements, the Center is increasingly dealing with infringement cases, including cases moving to mediation or arbitration from courts or other authorities. These cases arising from non-contractual sources now represent 43% of the caseload.

The Center's settlement rates of 70% for mediation and 33% for arbitration is one of the significant advantages of mediation and arbitration. The Center has recently seen big changes, for example in its caseload; a growth rate of more than 80% is expected in 2022, amounting to more than 500 disputes this year. Further, cases are now almost fully administered online, for both the conduct of hearings and procedural steps.

The role of the Center is to provide procedural assistance to parties. It helps in the administration of cases, including by [providing online tools](#). Importantly, the Center also assists parties with the appointment of mediators and arbitrators, by proposing candidates drawn from a vast network of more than 2,000 experts specialized in different areas, including former judges.

The Center makes available [model contract clauses](#), which can be combined as needed. One clause that is often used is an escalation clause that provides for mediation followed by arbitration. Additionally, there are model submission agreements, which are also used frequently. The WIPO Mediation Rules also provide the possibility of [unilateral requests for mediation](#), which are used very widely and quite effectively. Finally, a number of cases are referred by courts. In this respect, the Center has published a guide on its collaborations with different authorities, including IP offices and courts. The Center has a number of strong collaborations with courts, for example with the [Supreme People's Court of China](#), and has also been accredited by the Ministry of Justice of China to provide mediation and arbitration services for international disputes in China.

In the area of fair, reasonable, and non-discriminatory (FRAND) license terms for SEP disputes, the Center has worked with large patent holders and standard-setting organizations to develop model, tailored mediation and arbitration clauses. These are often used in unilateral requests for mediation, some of which have resulted in license agreements. There are also cases submitted by parties in disputes that are pending before courts in parallel proceedings in different jurisdictions.

Finally, 15% of the cases dealt with by the Center involve [life sciences disputes](#), which are often contractual and deal with a wide range of issues arising at all stages of companies'

collaborations, starting with non-disclosure agreements up to licensing and joint manufacturing and distribution agreements. As part of the WIPO's COVID-19 package, the WIPO Center has published a guide in which the use of mediation to facilitate contract negotiations in the area of life sciences is proposed. These ADR options be used by pharmaceutical companies and by entities in developing countries looking to increase their manufacturing capacity.

WIPO's Work with Judiciaries

The session provided an overview of [WIPO's work with judiciaries](#), which aims to empower members of the judiciary to fulfill their vital role in ensuring that IP, innovation and creative ecosystems are balanced and effective, while also contributing in providing IP-related knowledge and data to a wider general audience.

The four focuses of WIPO's work were described as follows. It was reiterated that this work is guided by the overarching principles of recognition of the diversity of national judicial structures and approaches with an emphasis on national ownership and sustainability, as well as the prioritization of judicial perspectives through the WIPO Advisory Board of Judges.

In the first area of transnational judicial dialogue, WIPO strives to be a global convener of an international community of IP judges through various activities, such as the flagship annual IP Judges Forum, as well as Master Classes on IP Adjudication targeting experienced IP judges in a workshop format and in partnership with national courts, and the WIPO Webinars for Judges series that was introduced during the COVID-19 pandemic to discuss trending topics in IP.

The second area focuses on the publication of judicial resources to support education activities as well as to increase global accessibility to the jurisprudence of different regions. In 2022, the first three volumes of a new IP Benchbook Series have been completed, covering the international IP legal framework, and adjudication in the Philippines and Viet Nam. Further volumes are in progress. It was also reported that the second volume of the WIPO Collection of Leading Judgments on IP Rights, covering the Members of the African Intellectual Property Organization (OAPI), will be launched.

The third area of work is provision of continuing judicial education on IP, including through the WIPO Academy Distance Learning Course on IP for Judges. In 2022, record numbers of judges completed the course, including from Egypt and the United Republic of Tanzania.

Finally, WIPO strives to be the authoritative source of global IP legal information through the [WIPO Lex database](#), which covers not only laws and treaties applicable to all Member States, but now also includes IP judgments from 28 countries with the UK being the most recent country to join. The Institute expressed its gratitude to the personal engagement and support of judges, many of whom were present, in continuing to expand the coverage of WIPO Lex-Judgments.

Session 7: Cutting Edge Management of IP Cases

The panel opened with an introduction to case management in the context of IP cases, observing that the role of judges in effectively managing cases is evolving to become more active across jurisdictions. In this respect, the advantages of continuous case management by the same trial judge throughout a proceeding to ensure proper understanding of the issues were noted, as well as the importance of the role of judges in narrowing the issues to

be resolved, and in reaching agreement on other elements such as agreed facts and witnesses to be called.

The panelists shared particular procedures and practices that have been developed in their jurisdictions in response to the national context. These included techniques relating to the timely dispensation of a case, such as pre-trial and scheduling conferences, the introduction of alternative dispute resolution, and the establishment of special timelines tailored to IP cases. In the Philippines, other judicial management techniques included the use of affidavits to provide written evidence in lieu of direct examination to expedite proceedings, with the possibility of cross-examination; and special procedures to address challenges in enforcing search warrants, service of documents, and dealing with seized goods. In the United Republic of Tanzania, there is a bar on appeals from preliminary and interlocutory matters that do not conclusively dispose the matter, in order to reduce unnecessary procedural steps. Meanwhile, the Indonesian judicial structure seeks to streamline the appeal process for IP cases and allows decisions of the Commercial Court to be appealed directly to the Supreme Court, without needing to appeal to the High Court. In a number of countries, such as Australia, Egypt, New Zealand, Philippines, Republic of Korea and Singapore, the specificities of IP adjudication are addressed in special rules of procedure applicable to IP cases.

On the topic of evidence, various approaches to managing evidence were described. For example, in IP proceedings before the Federal Court of Australia, the parties' experts may be required to exchange their written evidence and to produce a joint expert report with the assistance of a judicial registrar, which provides greater clarity on the areas of disagreement to the court. Such methods for receiving expert evidence concurrently have also been adopted in other jurisdictions. In the Philippines, the specialized rules of procedure allow the IP Office to provide technical experts to support judges (in addition to the parties' experts). In some countries, the court has the power to appoint its own expert, but this method is used to varying degrees across countries.

Different methods for predicting and managing costs were shared. The possibility of cost-capping was raised. In some jurisdictions, even where cost-capping is not applied, the court may require applicants to present the expected costs in advance, and may interrogate the costs presented.

A number of participants were interested in learning about how courts in different countries manage the storage of infringing goods from the pre-trial stage, given that they may be considered again at trial, or on appeal. Among the experiences shared by the panel, it was noted that, in the Philippines, in certain circumstances it is possible retain only a portion of the infringing goods that are placed in the court's custody as evidence, and to dispose of the remainder. This approach may require consideration of factors such as whether the goods are all similar, whether the storage costs would be prohibitive, and consent of the parties. Although trial judges sometimes use photographs in their decisions for the benefit of appellate courts, the ideal practice is for evidence to be available for inspection on appeal.

During discussion among the panel and participants, a number of case management challenges faced by judges across jurisdictions were raised, including the difficulty of handling IP matters within the tight timeframes required by the rules in some jurisdictions; the assessment of the value of infringing or affected goods, in the context of computing the amount of a bond or of damages; and managing the scope and cost of discovery.

The discussion highlighted the importance of achieving consistency in the judicial management of IP cases, to enable all parties to understand the litigation process and what they can expect, and to contribute to trust in the judicial process. Some of the methods used to achieve this were shared, such as organizing regular judicial education on IP at both the

national and international level; and the development of resources to support judges in the adjudication of IP disputes, such as through WIPO's Intellectual Property Benchbook Series, and through the access to global jurisprudence provided by the WIPO Lex database. There was also interest in having access to comparative information on jurisprudence from across the world on issues of common interest in IP cases, as well as greater opportunities to discuss with other judges at the regional and international level.

Session 8: Judgment Writing in IP Cases

A written judgment is the outcome of the judicial deliberations in a case, and it embodies the final decision that is communicated to the parties and the relevant audience. It is inevitable that judges imprint their own style in each judgment. However, in some jurisdictions, judges are bound by legal requirements governing certain aspects of the written decision. This session addressed these and other related considerations and revealed the convergences and divergences amongst jurisdictions in approaches to judgment writing.

It was noted that, in some countries, the civil procedure codes provide some rules for judgment writing. For instance, in Japan, the Civil Procedure Code establishes that the written decision must contain the facts and the grounds or reasons for dismissing or accepting the claims. In contrast, in other jurisdictions, there are no legal rules for judgment writing. The different roles of courts at different levels was recalled. It was observed that courts of appeal or cassation may exercise jurisdiction to review the legality of a contested decision, but may not review the facts that form the basis of the case. Accordingly, judgments from these courts normally have a special structure, since they briefly refer to the facts and grounds and give greater focus to whether or not the lower-instance court correctly applied the law. In terms of style, it was highlighted that in some countries, a standard style of writing has developed through established practice and is normally followed by judges; whereas, in other jurisdictions, even though there might be informal writing conventions, judges use their own distinct styles in writing and structuring their decisions.

The panel also discussed the features that may be important for an effective IP judgment. Some of the elements that were raised were clarity; cohesiveness; a precise identification and arrangement of the parties, facts, evidence and issues contended; a strong introduction and conclusion; a thorough understanding and communication of the law and its interpretation criteria; proper assessment of credibility; and the use of plain language.

The different practices to addressing infringement and validity claims in the same judgment (where these claims are heard together) were compared. In some of the jurisdictions, the established practice is to address any validity question first, since it is necessary to verify whether the right is valid before moving to other considerations. However, in other instances, the judge's approach may depend on how the validity question is posed. For instance, in one jurisdiction, the approach would depend on whether the validity question is raised as a defense or as a counter claim. If it is raised as a defense and the court does not find an infringement, then the court will not address the validity concern. When the validity question is raised as a counterclaim, the court needs to address it except if the claimant waives the request.

The speakers shared their experiences on how judges may consider the audience for their decision when writing a judgment. It was agreed that the primary audience for a judicial decision is the parties to a dispute, but it was observed that other stakeholders may also be relevant, such as higher-instance courts and IP right holders, amongst others. In this regard, from the different perspectives of first instance and appellate courts were noted. For judges from lower courts, it may be important to clearly demonstrate that every argument brought by

the parties was properly considered, and that the decision is well founded in terms of fact-finding, credibility and alternative solutions, in light of the potential for appeal. On the other hand, judges from courts of appeal may orient their expression toward a broader audience, such as the IP right holders' community or IP Offices, to provide clarity and consistency within the IP system.

The discussion also addressed the role of dissenting and concurring opinions, where these practices exist. In some jurisdictions, judges sitting as part of a panel (such as on a court of appeal or supreme court) are permitted to hand down concurring opinions (when they agree with the majority on outcome but wish to provide different reasons) or dissenting opinions (when they disagree with the majority decision). The panel highlighted that these opinions are valuable since they may raise awareness of problems with the law or how the court applies the law, and they can serve as inspiration for other legal arguments or evolving judicial approaches in future cases.

Reference judgments

- Supreme Court of Jamaica [2022]: [*Cabel Stephenson v Doreen Hibbert, Cressida Rattigan and Leba Thomas, Case No. JMSC Civ. 65*](#)
- Intellectual Property High Court of Japan (Grand Panel) [2018]: Case No. 2016 (Gyo-Ke) 10182, 10184
- Supreme Court of Kazakhstan [2017]: Case No. 3 пп-281(2)-17
- Court of Cassation of Morocco, Chamber of Commerce [2019]: *Saint Mark Limited v Lispadon*, Case No. 14/3/1/2018
- U.S. Court of Appeals for the Federal Circuit [2012]: *Byrne v Wood, Herron & Evans, LLP*, 676 F.3d 1024
- U.S. Court of Appeals for the Federal Circuit [2012]: *Coach Services, Inc. v Triumph Learning LLC*, 668 F.3d 1356
- U.S. Court of Appeals for the Federal Circuit [2014]: *PAR Pharmaceutical, Inc. v TWI Pharmaceuticals, Inc.*, 773 F.3d 1186
- U.S. Court of Appeals for the Federal Circuit [2020]: *Valeant Pharmaceuticals North America LLC v Mylan*, 978 F.3d 1374

Closing

The 2022 WIPO IP Judges Forum was closed by Mr. Marco Alemán, Assistant Director General of the IP and Innovation Ecosystems Sector at WIPO, and Justice Annabelle Bennett, Chair of the WIPO Advisory Board of Judges.

Speaking on behalf of WIPO, Mr. Alemán observed that the enthusiasm for IP among the participating judges was very evident. He was impressed by the number of registrations received, but equally delighted to witness the very open and honest dialogue among judges during the Forum sharing their experiences. The warmth in the room, in the Zoom chat, and the in the WhatsApp group was truly palpable.

Mr. Alemán observed that there is strong interest in IP across all regions, and countries with different kinds of IP cases and experience. The Forum had provided much learning about the different circumstances that apply in different legal and judicial systems, as well as showing some similarities and trends across countries.

For example, it was clear that issues such as the challenges of preliminary injunctions are of great interest to many judges. There was a lot of interest in arbitration and mediation proceedings and the work of the WIPO Arbitration and Mediation Center. WIPO had also heard from judges that the case management of IP disputes is an important area to continue

to address. WIPO, and in particular its Judicial Institute, will continue to work on these areas – particularly case management and judicial procedure, which are the focus of several projects.

Mr. Alemán envisaged that, having established itself as a convener of a global community of IP judges, the WIPO Judicial Institute will continue to strengthen its role as the provider of IP judicial education and resources, and continue to improve access to global IP legal information. WIPO will respond to judicial needs through considered choices, creating modern and effective formats that are attuned to changing realities. Mr. Alemán reiterated the value of the continuing support of the participating judges, in order to do so. WIPO is conscious that the community of 1700 judges in the Institute’s network is built on the engagement of judges who take time out of their demanding schedules to share their valuable contributions. In particular, Mr. Alemán underscored WIPO’s deep gratitude to the members of the WIPO Advisory Board of Judges and to its Chair, Justice Annabelle Bennett. Since the creation of the WIPO Judicial Institute five years ago, its programs have benefited from their personal engagement and impact.

Mr. Alemán announced that the 2023 WIPO IP Judges Forum will take place on November 15 and 16, 2023, and hoped that the participating judges – new and old friends – will continue to engage with WIPO and, more importantly, with the international IP judicial community that is the heart of WIPO’s work with judiciaries.

Speaking in her capacity as Chair of the WIPO Advisory Board of Judges, Justice Bennett thanked all the attending judges for their active participation, both in person and online, which had made the Forum a success. Justice Bennett thanked the WIPO Judicial Institute for organizing the Forum and highlighted the Institute’s work beyond the Forum. Justice Bennett expressed her appreciation for the opportunity provided to exchange with so many judges from all over the world, and looked forward to the 2023 edition of the Forum. All participating judges were warmly invited to join the 2023 Forum and to bring their colleagues with them to join the international IP judicial community.





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