Patent Enforcement
The ‘Desire for Harmonisation’-factor

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Europe ≠ the Continent
Europe = European Patent Office
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 EPC Contracting States
European Patent System

• Strasbourg Convention on the unification of certain points of substantive law on patents for invention (1963)

• Munich Convention on the grant of European patents (1973/2000)

• Luxembourg Community Patent Convention (1975/1989)

Harmonised and Unified Patent Law

• Preamble EPC:
  – a single procedure for the grant of patents
  – the establishment of certain standard

• Article 2(2) EPC:
  … unless this Convention provides otherwise

• Articles 52-57, 63, 68, 69, 70, 71-74, 83, 138-139
Uniformity within the EPO(1)

Uniformity is promoted by:

• Guidelines for Examination

• Case Law of the Boards of Appeal

• Case Law of Enlarged Board of Appeal

Uniformity within the EPO(2)

Article 112 EPC:
“In order to ensure uniform application of the law or if a point of law of fundamental importance arises:
(a) the BoA shall refer any question to the Enlarged BoA …
(b) the President of the EPO may refer a point of law to the Enlarged BoA where two Boards of Appeal have given different opinions …
Infringement and Revocation

• National courts decide on infringement and revocation.

• National courts have to apply uniform and harmonised European patent law.

• National courts arrive at different judgements when ruling on identical infringements and identical nullity arguments.

Causes of divergent decisions

• Some criteria and instructions in the EPC leave room for divergent applications.

• Differences between the laws of evidence or the laws of procedure may lead to a different complex of facts, and thus to different assessments.

• The way in which the European system and national traditions are appreciated.