

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)

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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

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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

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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 ...

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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.

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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.

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