

XIXTH EIPIN CONGRESS

ENFORCING INTELLECTUAL PROPERTY IN TRADE AND INVESTMENT AGREEMENTS

What Safeguards for its Social Function?



organized by the Center for International



Intellectual Property Studies

CEIPI

University of Strasbourg

FRANCE

25 APRIL 2018

26 EUROPEAN PARLIAMENT STRASBOURG

This event is organized in the framework of EIPIN IS European project and in partnership with the members of the EIPIN network and the European Parliament Liaison Office in Strasbourg.



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Institute for Globalisation and
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Intellectual Property Law and
Knowledge Management/IPKM

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Munich
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Property
Law Center

Augsburg
München
Washington DC

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PROGRAMME

International trade and investment agreements increasingly include provisions on the protection of intellectual property. Recent decisions of arbitral tribunals shed light on this interaction between intellectual property and investment law raising important questions about the coexistence of the different bodies of law and the competence of various fora for adjudicating IP-related disputes.

This conference will critically examine the present landscape of trade and investment agreements, the legitimacy of current practices with regard to the social function of intellectual property rights and the likely avenues for future developments in the field. The latest cases will be discussed not only in the context of investor-state dispute settlement but also in the framework of the World Trade Organisation mechanisms. The interaction with fundamental rights and ethics will be explored, as well as some specific implications for the EU. The ongoing negotiations with regards to the CETA and the TTIP will serve as a common thread for the discussions.

WEDNESDAY, 25 APRIL 2018

MODULE I SAFEGUARDING THE SOCIAL FUNCTION WHEN CONCEPTUALIZING THE RELATIONSHIP BETWEEN IP, TRADE AND INVESTMENT PROTECTION

13:00-13:45 / REGISTRATION //

13:45-14:20 / WELCOME

Luis MARTINEZ GUILLEN, Director, European Parliament Liaison Office in Strasbourg, France

ENFORCING INTELLECTUAL PROPERTY IN TRADE AND INVESTMENT AGREEMENTS: AN INTRODUCTION

SPEAKER: Christophe GEIGER, Professor of Law, Director General and Director of the Research department, CEIPI, University of Strasbourg, France

14:20-14:40 / QUESTIONS TEAM 1 / DISCUSSION //

14:40-15:20 / TOPIC 1: MAPPING THE PROTECTION OF IP IN TRADE AND INVESTMENT AGREEMENTS: A REVIEW OF THE PRESENT AND FUTURE LANDSCAPE

This panel will examine the integration of IP protection in international trade and investment agreements, historically from the past, to the present and future. Can any trends be observed with IP protection in international treaties (e.g., ratified and in force treaties such as NAFTA)? Can the same trends be observed in comparison to signed but not ratified treaties (CETA, EU-Singapore) or treaties under negotiation (such as TTIP)? How is IP protection regulated and what are the legal mechanisms used (in bilateral, plurilateral and multilateral treaties)? What are dispute-settlement tools available under such treaties?

SPEAKER: Henning GROSSE RUSE-KHAN, Reader and Co-Director, Centre for Intellectual Property and Information Technology Law (CIPIIT), University of Cambridge, United Kingdom

SPEAKER: Pedro ROFFE, Senior Fellow, International Centre for Trade and Sustainable Development (ICTSD), Geneva, Switzerland

CHAIR: Anke MOERLAND, Assistant Professor of Intellectual Property Law, Maastricht University, Netherlands

15:20-15:40 / QUESTIONS TEAM 2 / DISCUSSION //

15:40-16:20 / TOPIC 2: CONCEPTUALIZING THE PROTECTION OF IP AS AN INVESTMENT: ASSESSING THE LEGITIMACY OF PAST AND CURRENT PRACTICES IN TRADE AND INVESTMENT TREATIES //

This panel deals with theoretical and practical aspects of the qualification of "intellectual property" as an "investment". Why is intellectual property protected as an investment? Is it legitimate? What are consequences of such a qualification, and are there any alternatives?

SPEAKER: Carlos CORREA, Professor and Director, Center for Interdisciplinary Studies on Industrial

Property and Economics, University of Buenos Aires, Argentina

SPEAKER: **Bassem AWAD**, Deputy Director, Centre for International Governance Innovation, Waterloo, Canada

CHAIR: **Guido WESTKAMP**, Professor of Intellectual Property and Comparative Law, Queen Mary University of London, United Kingdom

16:20-16:40 / QUESTIONS TEAM 3 / DISCUSSION //

16:40-17:00 / COFFEE BREAK //

17:00-17:40 / TOPIC 3: LOOKING AT SPECIFIC EXAMPLES: "PHILIP MORRIS", "ELI LILLY" AND OTHER CASES: WHICH SAFEGUARDS EXIST FOR PUBLIC POLICY AND TRIPS FLEXIBILITIES? //

This panel will discuss the details of two iconic disputes in the field of IP and investment protection: the Philip Morris cases, pitting the multinational tobacco company against countries implementing plain packaging regulations (i.e., Uruguay and Australia), and the Eli Lilly v. Canada case decided in March 2017. The panellists will contextualize the disputes and discuss the arguments of the parties and the decision of the tribunals in order to highlight public policy issues arising out of, and the potential impact on, TRIPS flexibilities.

SPEAKER: **Cynthia HO**, Professor, Loyola University of Chicago School of Law, United States of America

SPEAKER: **Simon KLOPSCHINSKI**, Associate, rospatt osten pross law firm, Düsseldorf, Germany

CHAIR: **Seth ERICSSON**, Research Fellow and Program Director, MIPLC, Max Planck Institute for Innovation and Competition, Munich, Germany

17:40-18:00 / QUESTIONS TEAM 4 / DISCUSSION //

19:00 / DINNER AT CAFÉ BRANT //

THURSDAY, 26 APRIL 2018

MODULE II SAFEGUARDING THE SOCIAL FUNCTION WHEN ADJUDICATING IP, TRADE AND INVESTMENT PROTECTION

09:00-09:40 / TOPIC 4: ADJUDICATING INTELLECTUAL PROPERTY IN INVESTOR-STATE DISPUTE SETTLEMENT PROCEDURES: FUNCTIONING AND CHALLENGES //

This panel will review new challenges raised by the adjudication of IP disputes in investor-state tribunals. In particular, it will give an overview of the functioning and principles guiding investor-state arbitrations and highlight potential issues that can arise for the intellectual property regime. This panel will also address the issue of jurisdictional conflicts in the light of recent cases on IP and investment protection.

SPEAKER: **Robert HOWSE**, Professor, New York University School of Law, United States of America

SPEAKER: **Xavier SEUBA**, Senior Lecturer and Researcher, CEIPI, University of Strasbourg, France

CHAIR: **Pilar MONTERO**, Professor of Commercial Law and Director, Magister Lvcentivns, University of Alicante, Spain

09:40-10:00 / QUESTIONS TEAM 5 / DISCUSSION //

10:00-11:00 / TOPIC 5: THE ENFORCEMENT OF IP BY THE WORLD TRADE ORGANISATION PANEL: COMPARATIVE VIEWS //

This panel will discuss how the World Trade Organisation Dispute Settlement Body is adjudicating IP cases under trade law. The panellists will focus on cases involving IP with the aim of comparing the disputes at the World Trade Organisation with other international disputes on similar matters. The speakers will address the question of potential multiplication of the same or similar disputes in front of different dispute settlement mechanisms, and the issue of forum shopping that can arise.

SPEAKER: **Hannu WAGER**, Counsellor, World Trade Organisation, Geneva, Switzerland

SPEAKER: Rochelle DREYFUSS, Professor and Co-Director, Engelberg Center on Innovation Law & Policy, New York University, United States of America

SPEAKER: Enrico BONADIO, Senior Lecturer, City University, London, United Kingdom

CHAIR: Xavier SEUBA, Senior Lecturer and Researcher, CEIPI, University of Strasbourg, France

11:00-11:20 / QUESTIONS TEAM 6 / DISCUSSION //

11:20-11:40 / COFFEE BREAK //

11:40-12:20 / TOPIC 6: WHAT ROLE FOR HUMAN RIGHTS AND ETHICS IN IP, INVESTMENT AND TRADE DISPUTES? //

This panel will deal with challenges for human rights resulting in the treatment of IP as an investment. For example, trademarks have been used in the context of investment disputes with an aim to constrain public health regulation (Philip Morris). Therefore, some of the questions that will be addressed in this panel include: Have arbitral tribunals taken human rights considerations (e.g. public health, non-discrimination, due process) into account when adjudicating IP-related cases? How can the tensions between IP and human rights law be resolved in the context of investment law proceedings? Are investment tribunals well-suited to resolve IP / human rights tensions?

SPEAKER: Tuomas MYLLY, Professor, University of Turku, Finland

SPEAKER: Thomas COTTIER, Emeritus Professor of Law, University of Bern, Switzerland

CHAIR: Giancarlo FROSIO, Senior Lecturer and Researcher, CEIPI, University of Strasbourg, France

12:20-12:40 / QUESTIONS TEAM 7 / DISCUSSION //

12:40-14:30 / LUNCH AND BOARD MEETING AT THE EUROPEAN PARLIAMENT //

14:30-15:10 / TOPIC 7: THE COMPLIANCE OF INVESTMENT PROTECTION MECHANISMS IN FREE TRADE AGREEMENTS WITH EU LAW (INCLUDING THE COMPETENCY OF THE EU AND AUTHORITY OF THE CJEU) AND POSSIBLE CONSEQUENCES FOR IP PROTECTION

This panel will focus on three closely connected issues. First, the compliance of investment protection mechanisms included in recent Free Trade Agreements, such as CETA or TTIP, with EU primary law will be scrutinized. In this sense, the panel will also address the possible implications for IP laws in Europe derived from the IP provisions of those agreements. Second, the scope of competence of the EU to enter into negotiations and be party to the agreements will be assessed: does the EU have exclusive competence or is the competence shared with the Member States? Third, the authority of the CJEU and its recent decisions regarding the free trade agreements including investment protection will be analysed.

SPEAKER: Szilárd GÁSPÁR-SZILÁGYI, Postdoctoral Fellow, University of Oslo, Norway

SPEAKER: Rainer GEIGER, Of Counsel, Sybarius Avocats, Brussels, Belgium

CHAIR: Ana RAMALHO, Assistant Professor of Intellectual Property Law, Maastricht University, Netherlands

15:10-15:30 / QUESTIONS TEAM 8 / DISCUSSION //

15:30-16:10 / TOPIC 8: TOWARDS AN INVESTMENT COURT SYSTEM FOR THE EU: CURRENT PROPOSALS AND POSSIBLE IMPLICATIONS FOR IP ENFORCEMENT //

This panel provides an overview of the current state of affairs in relation to the establishment of a permanent court in the EU to hear investment disputes. In particular, the court's potential strengths and weaknesses will be assessed in light of the EU's commitment to include the investment negotiations with its foreign trading partners under such a system. More generally, the panel will address the possible consequences of submitting IP disputes to such an investment court for the innovation environment in Europe.

SPEAKER: [Catherine KESSEDJIAN](#), Professor Emeritus, University Paris II - Panthéon Assas, and Arbitrator/Mediator, France

SPEAKER: [Kamalimne PINTPUVADOL](#), Executive Director, International Institute for Trade and Development (ITD), Bangkok, Thailand

CHAIR: [Josef DREXL](#), Director, Max Planck Institute for Innovation and Competition, Munich, Germany

16:10-16:30 / **QUESTIONS TEAM 9 / DISCUSSION** //

16:30-16:50 / **COFFEE BREAK** //

16:50-17:50 / **FINAL ROUNDTABLE: CONTROVERSIES AND POLICY ISSUES ARISING FROM IP AND ISDS IN THE EU: A CLOSER LOOK AT THE CETA AND THE TTIP** //

This panel, in the form of a final roundtable, will include a discussion of controversies and policy issues arising from the utilisation of the investor-state dispute settlement in IP cases in the European context. The focus will be on the CETA and on the current negotiations of the TTIP. The panel will gather prominent personalities representing academics, practitioners and policy makers to discuss the main challenges and issues arising from these agreements.

SPEAKER: [Pedro VELASCO MARTINS](#), Member of the Cabinet of Commissioner Malmström, European Commission, Brussels, Belgium

SPEAKER: [Julia REDA](#), Member of the European Parliament, Brussels, Belgium

SPEAKER: [Daniel SEGOIN](#), Legal advisor and French agent to the CJEU in the Legal Service of the French Ministry for Foreign Affairs, Paris, France

SPEAKER & CHAIR: [Christophe GEIGER](#), Professor of law, Director General and Director of the Research department, CEIPI, University of Strasbourg, France

17:50-18:10 / **QUESTIONS TEAM 10 / DISCUSSION** //

18:10-18:15 / **CLOSING REMARKS** //

[Christophe GEIGER](#), Professor of Law, Director General and Director of the Research department, CEIPI, University of Strasbourg, France

18:30-19:30 / **VISIT OF THE EUROPEAN PARLIAMENT** //

20:00 / **DINNER AT LA RUCHE AUX DEUX REINES** //

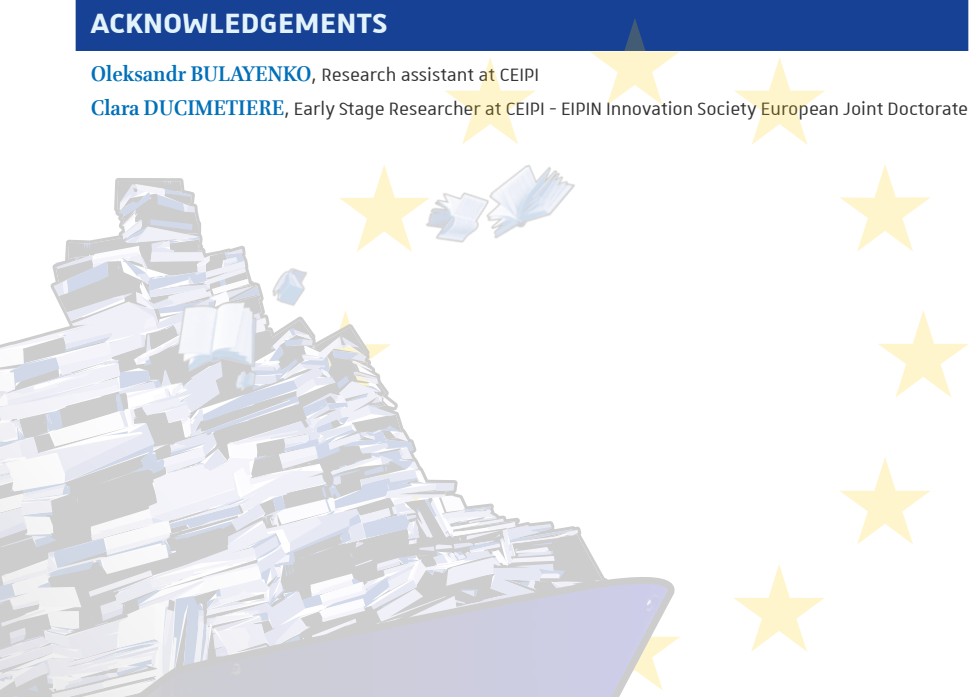
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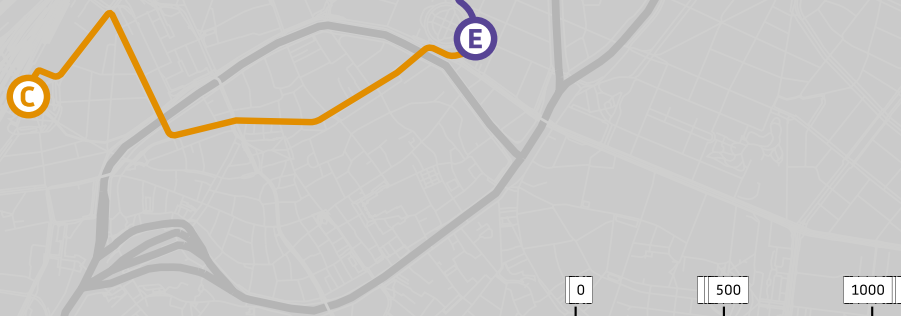
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[Clara DUCIMETIERE](#), Early Stage Researcher at CEIPI - EIPIN Innovation Society European Joint Doctorate





Practical Information



VENUE

European Parliament

1 Avenue du Président Robert Schuman

67000 Strasbourg

Building Salvador de Madariaga, 7th floor, room SDM S7

Access: Tramway E, stop Parlement européen

TIME TABLE

25/04/2018 – 13:00 - 19:00

26/04/2018 – 09:00 - 19:00

CATERING

Coffee breaks will be served in front of the conference room. Lunch will be served at the European Parliament restaurant (self service).

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