Cross-border injunctions in **European patent matters**

In an increasingly interconnected global economy, patent disputes rarely confine themselves to single jurisdictions. Cross-border injunctions in patent litigation have emerged as powerful yet controversial tools, testing the traditional territorial limits of patent law. Such judicial remedies, designed to prevent patent infringement across multiple jurisdictions through a single court order, simultaneously represent a pragmatic response to globalized commerce and a challenge to fundamental principles of sovereignty and international law.

Cross-border injunctions were initially championed by Dutch courts in the late twentieth century as a means of enhancing judicial efficiency and reducing litigation costs for patent holders. However, in the absence of a solid legal basis, this innovation collided head-on with the principle of patent territoriality: patents are fundamentally national rights, and their infringement, as well as validity, are governed by the laws of each respective country. European patents were, in essence, bundles of such national rights. The European Court of Justice (ECJ, now the Court of Justice of the European Union - CJEU) addressed the issue in landmark decisions such as GAT v. LuK (2006) and Roche v. Primus (2006), curtailing the availability of cross-border injunctions by holding that only the courts of the state in which a patent was registered could rule on validity.

In C-4/03 – GAT v. LuK, the Court of Justice of the European Union held that a national court could not adjudicate the invalidity of a foreign patent, even when such invalidity was invoked as a defence against an infringement claim. The ruling referred to the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters which, unlike the Brussels I Recast Regulation, was silent on whether the validity could be raised by way of action or defence. As a result, proceedings in international cases always had to be stayed as soon as the defence of invalidity was raised.

Nowadays, the legal foundation for cross-border injunctions is primarily found in the Brussels I Recast Regulation (EU 1215/2012). Article 4(1) establishes that the courts of a Member State where a defendant is domiciled may have jurisdiction over infringement claims, while Article 24(4) reserves exclusive jurisdiction on the courts of the Member State in which the patent has been registered with respect to matters of validity. This division of jurisdiction implies that, while cross-border injunctions against infringement could theoretically be granted, such proceedings are effectively halted once the alleged infringer raises a validity defense, since only the courts of the state of registration could decide on the validity issue.

Where patent infringement is considered a matter of tort, the claimant may choose between the courts of the Member State in which the defendant is domiciled (the general rule) or those of the Member State in which the harmful event occurred or may occur (Article 7(2)2 Brussels I Recast Regulation). The interference between Article 4(1) and Article 24(4) of the Brussels I Regulation generates jurisdictional tension when a patent infringement claim filed with the court where the defendant is domiciled is met with a patent annulment counterclaim or defence, where the said patent is a foreign patent. The issue of the validity of the patent is very frequently raised as a defence in patent infringement actions.

In case of preliminary injunction applications, it is generally considered that the court does not render a decision on validity but merely assesses the likelihood that the patent would be found invalid in subsequent invalidity proceedings. Accordingly, Article 24(4) of the Brussels I Recast Regulation should not prevent the court from issuing a preliminary injunction, even in a cross-border situation.

In infringement proceedings on the merits, however, the situation is less straightforward. Recently, in a 2025 decision delivered in Case C-339/22 BSH v. Electrolux, the CJEU clarified that EU Member State courts in which the defendant is domiciled retain jurisdiction to grant cross-border injunctions regarding infringement, even if an invalidity defence is raised. However, crucial limitations remain:

- National courts cannot rule on the validity of foreign patents (i.e., patents registered in another state) and must stay or split proceedings if validity is contested.
- For non-EU patents (such as post-Brexit UK rights), EU courts may assess validity but only with *inter partes* effect—not creating a binding *erga omnes* decision.
- Coordination between national revocation actions and cross-border infringement claims is necessary; courts may stay infringement proceedings pending validity determinations elsewhere.

Therefore, the courts of the Member State in which a defendant is domiciled have jurisdiction in an action alleging infringement by that defendant of a patent granted in another Member State. Such courts may examine issues regarding the validity of the patent in order to determine infringement issues; however, the decision will not affect the existence or content of the patent in the state of grant. In any case, the matter of admissibility of cross-border patent injunctions should not pose any further questions.

The Unified Patent Court (UPC), operational since 2023, further expands the landscape. The UPC's jurisdiction allows for cross-border injunctions across up to 24 participating European Member States, even targeting non-EU and non-UPC members, provided that the infringing acts occur within the UPC territorial scope. Recent high-profile cases such as Dyson v Dreame (UPC, 2025) illustrate how the UPC can use "anchor defendants"—entities based in the court's jurisdiction but linked to global infringement chains—to extend injunction coverage.

In conclusion, cross-border injunctions in patent litigation reflect the tension between global commerce and national legal sovereignty. The recent expansion of such remedies in Europe— stemming both from the evolving CJEU jurisprudence and the UPC—strengthens the position of patent holders in an era of cross-border infringement.

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