

INJUNCTIONS IN PATENT LAW

Patents are important tools for innovation policy. They incentivize the creation and dissemination of new technical solutions and help to disclose their working to the public in exchange for limited exclusivity. Injunctions are important tools of their enforcement. Much has been written about different aspects of the patent system, but the issue of injunctions is largely neglected in the comparative legal literature. This book explains how the drafting, tailoring and enforcement of injunctions in patent law works in several leading jurisdictions: Europe, the United States, Canada, and Israel. The chapters provide in-depth explanation of how and why national judges provide for or reject flexibility and tailoring of injunctive relief. With its transatlantic and intra- European comparisons, as well as a policy and theoretical synthesis, this is the most comprehensive overview available for practicing attorneys and scholars in patent law. This book is also available as Open Access on Cambridge Core.

JORGE L. CONTRERAS is Presidential Scholar and Professor at the University of Utah S.J. Quinney College of Law.

MARTIN HUSOVEC is Assistant Professor at the London School of Economics and Political Science, LSE Law School.

Injunctions in Patent Law

TRANS-ATLANTIC DIALOGUES ON FLEXIBILITY AND
TAILORING

Edited by

JORGE L. CONTRERAS

University of Utah S. J. Quinney College of Law

MARTIN HUSOVEC

London School of Economics and Political Science



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Notes on Contributors

Sir Richard Arnold, MA (Oxford), Hon. DL (Westminster), is Lord Justice of Appeal in England and Wales, an external member of the Enlarged Board of Appeal of the European Patent Office and a visiting professor at the University of Westminster. He was called to the Bar of England and Wales in 1985 and became a QC in 2000. Previously, he was chairman of the Code of Practice for the Promotion of Animal Medicines Committee from 2002 to 2008, an appointed person hearing trademark appeals from 2003 to 2008 and a deputy high court judge from 2004 to 2008. He also served as a judge of the High Court, Chancery Division from October 2008 to September 2019 and judge in charge of the Patents Court from April 2013 to September 2019. He is the author of *Performers' Rights* (6th ed., Sweet & Maxwell, 2021), is the editor of the *Halsbury's Laws of England* title *Trade Marks and Trade Names* (5th ed., Butterworths, 2014), was the editor of *Entertainment and Media Law* from 1993 to 2004 inclusive and has published numerous journal articles and book chapters.

Lionel Bently, BA (Cambridge), is the Herchel Smith Professor of Intellectual Property Law and Deputy Director of the Centre for Intellectual Property and Information Law, Faculty of Law, University of Cambridge, and a professorial fellow of Emmanuel College, Cambridge. He is a barrister and door tenant at 11 South Square, Gray's Inn, London. Previously, he has held visiting posts at Murdoch University, Queensland University of Technology, University of New South Wales, National University of Singapore, Columbia University, University of Amsterdam and University of Technology, Sydney. He is co-director of the AHRC-funded Primary Sources on Copyright in five (now eight) jurisdictions (www.copyrighthistory.org), and was one of the principal investigators on the HERA-funded project "Of Authorship and Originality" (with the universities of Bergen and Amsterdam) and the AHRC-funded project on Copyright and News in the Digital Environment (with Ian Hargreaves). Professor Bently is the coauthor

of (with Brad Sherman) *The Making of Modern Intellectual Property: The British Experience* (Cambridge University Press, 1999); *Intellectual Property Law* (1–4 eds., with Brad Sherman; 5th ed., with Brad Sherman, Dev Gangjee and Phil Johnson, Oxford University Press, 2018); *Gurry on Breach of Confidence: The Protection of Confidential Information* (with Tanya Aplin, Simon Malynicz and Phill Johnson, Oxford University Press, 2012) and *Global Mandatory Fair Use: The Right of Quotation in International Copyright Law* (with Tanya Aplin, Cambridge University Press, 2020).

Alessandro Cogo, PhD (University of Pavia and Ludwig Maximilian University), JD (University of Turin), is an associate professor of business law and intellectual property at the Turin Law School and partner of the law firm CVPMLegal. Professor Cogo is the scientific director of the Intellectual Property Master organized by WIPO and Turin University with the support of ITC-ILO. His writings include *I contratti di diritto d'autore nell'era digitale* (Giappichelli, 2010); *L'armonizzazione del diritto patrimoniale d'autore* (AIDA, 2016); *Appunti sulla contraffazione indiretta* (Giufrè, 2019); *Online Content-Sharing Platforms as Users of Copyrighted Contents* (AIDA, 2019).

Jorge L. Contreras, JD (Harvard), BSEE (Rice University), BA (Rice University), is a presidential scholar and professor of law at the University of Utah with an adjunct appointment in the Department of Human Genetics. His research focuses, among other things, on intellectual property, technical standards and science policy. He is the author of more than 100 scholarly articles and book chapters that have appeared in scientific, legal and policy journals including *Science*, *Nature*, *Georgetown Law Journal*, *NYU Law Review*, *Washington Law Review*, *Harvard Journal of Law and Technology*, *Antitrust Law Journal* and *Telecommunications Policy*. He is the editor of six books, including the *Cambridge Handbook of Technical Standardization Law* (2 vols., Cambridge University Press, 2017, 2019). He has been quoted in the *New York Times*, *Wall Street Journal*, *Economist*, *Washington Post* and *Korea Times*, and has been a guest on NPR, PRI and BBC radio shows and various televised broadcasts. His work has been cited by the US Federal Trade Commission, European Commission and courts in the United States and Europe. Before entering academia, Professor Contreras was a partner at the international law firm Wilmer Cutler Pickering Hale and Dorr LLP, where he practiced international transactional and IP law in Boston, London and Washington, DC. He currently serves as co-chair of the Interdisciplinary Division of the American Bar Association's Section of Science & Technology Law and a member of the American Antitrust Institute's Board of Advisors. He has previously served as a member of the National Academy of Sciences (NAS) Committee on IP Management in Standard-Setting Processes, the National Institutes of Health (NIH) Council of Councils, the Councils of the National Human Genome Research Institute (NHGRI) and the National Center for Advancing Translational Sciences (NCATS).

Léon E. Dijkman, PhD candidate (European University Institute), LLM (University of California, Berkeley, School of Law), LLM (Utrecht University), LLB, BA (Utrecht University), is an associate at the Amsterdam office of HOYNG ROKH MONEGIER. His doctoral research focuses on flexibility and tailoring injunctive relief in EU patent cases and in 2020, one of his early articles on the subject was awarded the Dutch AIPPI chapter's prize for best article by an author under 35. He teaches intellectual property law at the Erasmus School of Law in Rotterdam and is a member of the editorial board of *IER* (Kluwer), one of the Netherlands' oldest specialized journals. He also holds a research position at the European University Institute's Robert Schuman Centre for Advanced Studies and previously held a visiting position at the Max Planck Institute for Innovation and Competition.

Graeme B. Dinwoodie, LLB (University of Glasgow), LLM (Harvard), JSD (Columbia), is the Global Professor of Intellectual Property Law at Chicago-Kent College of Law. He returned full-time to Chicago in 2018 after nine years as the Professor of Intellectual Property and Information Technology Law at the University of Oxford, where he was also director of the Oxford Intellectual Property Research Centre and a professorial fellow of St. Peter's College. He remains a visiting professor of law at the University of Oxford. Immediately prior to taking up the IP Chair at Oxford, Professor Dinwoodie was for several years a professor of law at Chicago-Kent College of Law and, from 2005 to 2009, also held a chair in intellectual property law at Queen Mary College, University of London. Professor Dinwoodie has held a number of visiting or honorary positions, including as the Yong Shook Lin Visiting Professor of Intellectual Property Law at the National University of Singapore, a global professor of law at New York University School of Law, an honorary professor of law at the University of Strasbourg, the George P. Smith II Distinguished Visiting Chair at Indiana University Maurer School of Law, and a visiting professor of law at the University of Pennsylvania School of Law. He was elected a member of the American Law Institute in 2003, and served as president of ATRIP from 2011 to 2013. In 2008, INTA awarded Professor Dinwoodie the Pattishall Medal for Teaching Excellence in Trademark Law. In addition to his book *A Neofederalist Vision of TRIPS: The Resilience of the International Intellectual Property Regime* (Oxford University Press 2012), co-authored with Rochelle C. Dreyfuss, he is the author of five casebooks. His scholarship has appeared in several leading law journals and is widely cited by scholars in Europe, the United States and elsewhere.

Rochelle C. Dreyfuss, JD (Columbia Law School), MS (University of California, Berkeley), BA (Wellesley College), is the Pauline Newman Professor of Law at New York University School of Law and co-director of its Engelberg Center on Innovation Law and Policy. She recently held the Arthur Goodhart Visiting Professorship in Legal Science at Cambridge University and she has also visited

Swinburne University, Oxford University, the National University of Singapore, the University of Washington School of Law, the University of Chicago School of Law, and the Max Planck Institute. She served as a law clerk for Chief Judge Wilfred Feinberg (2d Circuit) and Supreme Court Chief Justice Warren E. Burger. She was a co-reporter of the ALI Project on Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transnational Disputes and served on National Academies of Sciences Committees on Intellectual Property in Genomic and Protein Research; on Intellectual Property in the Knowledge Based Economy; and on Science, Technology and Law. She was also a member of the National Institute of Health Advisory Committee on Genetics, Health and Society. Her writings include *A Neofederalist Vision of TRIPS: Building a Resilient International Intellectual Property System* (with Graeme B. Dinwoodie, Oxford University Press, 2012) and *Balancing Wealth and Health: The Battle over Intellectual Property and Access to Medicines in Latin America* (with César Rodríguez-Garavito, Oxford University Press, 2014). With Justine Pila, she edited *The Oxford Handbook of Intellectual Property Law* (Oxford University Press, 2018). Her recent work focuses on private international law, particularly in trade secrecy cases, and on state-to-state and investor–state dispute settlement.

Orit Fischman-Afori, LL.D. (Hebrew University of Jerusalem), LL.M. (Hebrew University of Jerusalem), LL.B. (Hebrew University of Jerusalem), is a law professor at the Striks School of Law, College of Management, teaching a variety of courses and seminars in the fields of intellectual property, law and technology and the mandatory course in corporate law and is often invited to lecture in Israel and worldwide. Professor Fischman-Afori also currently serves as a director of the Heth Center for the Research of Regulation and Competition Law, and as a member of the Israeli Competition Law Tribunal (District Court, Jerusalem). Previously, Professor Fischman-Afori served as Dean of the Striks School of Law beginning in 2016 through 2019, was a guest researcher at University of California, Berkeley in 2007, and a guest researcher at Cambridge University in 2013. Her doctorate dissertation focused on derivative works in copyright law and was published as a book in 2005. Professor Fischman-Afori's main fields of research are intellectual property, law and technology, information law and human rights. Professor Fischman-Afori publishes extensively in Israel, Europe and in the US. Her worldwide published studies present multidimensional examination of intellectual property law. Professor Fischman-Afori's publications include the development of the interface between intellectual property and human rights, emphasizing the importance of remedies in the development of substantive law, and promoting open standards along with practical tools for developing intellectual property law.

Thibault Gisclard, PhD (Sorbonne & Max Planck Institute), MS (University of Nancy), is Associate Professor of intellectual property law and comparative law at the University of Lille, where he supervises the university diploma in Industrial Property

Law. Professor Gislard is notably the coauthor of a book on legal methodology, now at its 5th edition (LexisNexis, 2020). He also teaches biotechnological and pharmaceutical patent law at the University of Poitiers, and is a member of the European Intellectual Property Teachers Network. After an MSc in Biomedical Sciences and a Magister Juris in European Business Law, he devoted his PhD thesis to the subject of comparative analysis of the right of publicity. Professor Gislard now focuses his research and publications mostly on biotechnological and pharmaceutical patent law, and on the interactions between the law of obligations and IP law, notably as regards damages for infringement of IP rights. He is a member of the European Law Institute.

John M. Golden, JD (Harvard Law School), PhD (Harvard), AB (Harvard), is the Edward S. Knight Chair in Law, Entrepreneurialism and Innovation at the University of Texas at Austin. Professor Golden has taught administrative law, contracts, patent law, and writing seminars relating to innovation and intellectual property. Since 2011, he has served as faculty director of the Andrew Ben White Center in Law, Science and Social Policy. His research has focused primarily on issues relating to innovation policy, institutional design, patents, and remedies. Before joining the faculty of the University of Texas School of Law, he clerked for the Honorable Michael Boudin of the United States Court of Appeals for the First Circuit and then for Associate Justice Stephen Breyer of the United States Supreme Court. He also worked as an associate in the intellectual property department of Wilmer Cutler Pickering Hale and Dorr LLP.

Willem A. Hoyng, PhD (Tilburg University), JD (University of Leiden), is a partner at HOYNG ROKH MONEGIER. Professor Hoyng's practice primarily consists of litigating in the field of intellectual property law. He acts before all the national courts (the courts of first instance, the courts of appeal and the Supreme Court), and regularly litigates before the Court of Justice of the European Union (CJEU) and the European Patent Office (EPO). Professor Hoyng is a member of a select group of lawyers admitted to appear before the Dutch Supreme Court. Professor Hoyng is also involved in advising on European patent strategies and coordinating and conducting European patent proceedings. He is the advisor of many innovative Dutch and foreign multinationals, including pharmaceutical and biotechnological companies. He is a member of the drafting committee of the Rules of Proceedings of the future Unified Patent Court (UPC) and member of the advisory committee of the UPC Preparatory Committee. He also advises the Dutch Ministry of Economic Affairs on UPC matters. Professor Hoyng has been teaching intellectual property law at the University of Tilburg since 1988.

Martin Husovec, PhD (Ludwig Maximilian University & Max Planck Institute), Masters and Bachelor (Pavol Jozef Safarik University), is an Assistant Professor at the London School of Economics and Political Science, LSE Law School. His

scholarship deals with questions of innovation policy and digital liberties, in particular regulation of intellectual property and freedom of expression. Professor Husovec is also a fellow at CREATE, Stanford Center for Internet & Society (CIS), and Tilburg Law and Economics Center (TILEC). Previously, he was an assistant professor at Tilburg University in the Netherlands, appointed jointly by Tilburg Institute for Law, Technology, and Society (TILT) and Tilburg Law and Economics Center (TILEC), and held visiting appointments at Stanford Law School (2014), the Japanese Institute for Intellectual Property (2015), the Central European University (2018), the European University Institute (2018) and the University of Cambridge (2019). He is the author of a monograph, *Injunctions against Intermediaries in the European Union*, published by Cambridge University Press in 2017.

Anna-Lena Karczewski is a junior associate at Reetz Sohm Rechtsanwälte (Zurich) and a former research assistant to Professor Peter Picht at the University of Zurich. Ms. Karczewski had her first practice experience with a focus on international intellectual property law at the law firm Heuking Kühn Lüer Wojtek in Hamburg as well as at the law firm Meyerlustenberger Lachenal in Zurich.

Matthias Leistner, PhD (Ludwig Maximilian University), LL.M. (Trinity Hall Cambridge), is a professor of private law and intellectual property law with information and IT law at Ludwig Maximilian University (LMU). Apart from his chair at LMU Munich, he is a member of the faculty of the Munich Intellectual Property Law Center (MIPLC), and a guest professor for European Intellectual Property Law at the University of Xiamen, and at the Tongji University. Previously, Professor Leistner was head of the Commonwealth Unit at the Max-Planck-Institute for Intellectual Property and Competition Law. From 2007 to 2016 he was the Professor of Civil Law, Intellectual Property Law and Competition Law and director of the Institute for Commercial and Economic Law at the University of Bonn. In the spring term 2020, he was short-term visiting professor at Columbia Law School. His specialties are intellectual property law (in particular copyright and patents), unfair competition law and internet law. He has published ten books and numerous articles in these fields and has been consulted on IP matters by various government departments and nongovernmental organizations as well as international institutions.

Marcus Norrgård, LL.D. (University of Helsinki), juris kandidat (University of Helsinki), is professor of law at the University of Helsinki, Vaasa Unit of Legal Studies. Professor Norrgård has served as director of the IPR University Center in Helsinki 2018–2020, as chairman of the Finnish Copyright Council (Tekijänoikeusneuvosto) 2008–2020 and as the editor-in-chief for *Tidskrift, utgiven av Juridiska föreningen i Finland*. Before joining the University of Helsinki, Norrgård was Professor of Intellectual Property Law at the Hanken School of Economics. Professor Norrgård specializes in intellectual property law with a special

interest in enforcement issues. He is the sole author of three books and over seventy journal articles and other publications. He has co-edited three books.

Peter Georg Picht, LL.M (Yale), PhD (Munich University/Max Planck Institute), is the Chair for Economic Law, Chairman Center for Intellectual Property and Competition Law (CIPCO) at the University of Zurich. Professor Picht is an affiliated research fellow at the Max Planck Institute for Innovation and Competition in Munich. Professor Picht is also a counsel in Schellenberg Wittmer's Competition Group and IP Group. Having worked with the EU Commission's Directorate General for Competition, he joined the Max-Planck-Institute for Intellectual Property and Competition Law in 2008, did his PhD (Promotion) in antitrust law with Professor Drexel and is currently a senior research fellow at the MPI. His academic teaching and writing, as well as his counseling activity, focus on intellectual property law, competition law, international private and procedural law.

Viola Pless is a research fellow with Prof. Dr. Dr. Mackenrodt at the Professorship of Law of Digital Goods, Commerce and Competition at TUM School of Management, Technical University Munich. She has previously held a position as research fellow at Professor Leistner's Chair for Private Law and Intellectual Property Law with Information Law and IT Law (GRUR Chair) at Ludwig Maximilian University Munich. She studied law in Munich and completed her legal clerkship at the Higher Regional Court of Munich. During her studies she was a scholar of the German National Merit Foundation and worked as a student research assistant at the Max Planck Institute for Innovation and Competition in the department of Professor Dr. Josef Drexel. Her further professional experience includes working in the competition law department of international law firms in Brussels and Munich.

Emmanuel Py, PhD (University of Strasbourg – CEIPI), is an associate professor of private law at the University of Burgundy, and a member of the European Intellectual Property Teacher's Network and of the Centre Innovation & Droit. Professor Py notably teaches IP law, property law and civil procedure law at the university of Burgundy, and at the CEIPI (Strasbourg) and Sciences Po Law School Paris. He is the director of the "Smart Cities and Data Governance" chair and of the eponymous master's degree. His research mostly focuses on patent law, IP litigation and trade secrets. He is the author and coauthor of many articles and books, including "Sanction des conditions de brevetabilité: à propos de la décision d'annulation," in *Les grands arrêts de la propriété intellectuelle*, M. Vivant (ed.), Dalloz 2020; "La contrefaçon transfrontalière d'une invention de procédé: approche de droit comparé," in *Les inventions mises en œuvre par ordinateur*, LexisNexis, 2019; *Droit de la propriété industrielle* (LexisNexis 2016, with J. Raynard and P. Tréfigny); and *La protection des secrets d'affaires: enjeux et perspectives* (LexisNexis 2015, with J.-M. Garinot).

Marco Ricolfi, LLM (Yale), JD (Turin University), is a professor of business law and intellectual property at the Turin Law School, partner of the law firm Weigmann Studio legale, and co-director of the Nexa Center on Internet and Society of the Turin Polytechnic. He is currently the president of the Comitato Consultivo permanente per il diritto d'autore set up at the Ministry for Culture. He was chairman of the Copyright subgroup of the EU High Level Expert Group for the Digital Libraries Initiative (2006–2007) and member of the *Fachbeirat* of the Max Planck Institute for Innovation & Compation. From 2000 to 2015, he was director of the Intellectual Property Master organized by WIPO and the Turin University. Publications include: *Trattato dei marchi: Diritto europeo e nazionale*, Giappichelli, 2015; “I segni distintivi di impresa: Marchio ditta insegna,” in P. Auteri et al., *Diritto industriale: Proprietà intellettuale e concorrenza*, Giappichelli, 2020; “Le operazioni di garanzia su macho,” *Giurisprudenza Commerciale*, 2020; “Security Rights over Intellectual Property,” *Annuario di diritto comparato e di studi legislativi*, 2018; “The Internet of Things and the Ages of Antitrust,” *Concorrenza e mercato (Giuffrè)*, 2017; “La protezione doganale della proprietà intellettuale,” *Annuario Italiano Diritto d'Autore*, 2016; “Trademarks and Human Rights,” in P. Torremans (ed.), *Intellectual Property Law and Human Rights*, Wolters Kluwer, 2015.

Norman Siebrasse, LLM (Chicago), LLB (Queen's), BS (Queen's), is a professor of law at the University of New Brunswick, having previously clerked for the Honourable Madam Justice McLachlin at the Supreme Court of Canada. His research and writing focuses on patent law, in particular pharmaceutical patent law, patent remedies and the intersection of IP law and commercial law. He is a co-editor of *Patent Remedies and Complex Products: Towards a Global Consensus* (Cambridge University Press, 2019). His blog, “Sufficient Description,” comments on recent Canadian patent cases and is widely read by the Canadian patent bar. Professor Siebrasse's work is regularly cited by the courts in patent cases.

Rafał Sikorski, PhD (Adam Mickiewicz University), LLM (Central European University), is a professor of law at the Adam Mickiewicz University in Poznań (Poland). His major research areas include patent remedies, the nexus between IP and competition law, standard essential patents, as well as various forms of private ordering in IP and particularly patent law. He has published on patent pools, access to standard essential patents, patent remedies, conflicts-of-law rules for IP contracts and IP infringement as well as copyright law. Results of his research appeared in books published by, for example, Edward Elgar, Cambridge University Press, Wolters Kluwer and C. H. Beck. At the Law Faculty of Adam Mickiewicz University, he teaches various courses on IP, civil law, private international law and European Union law. Rafał Sikorski is also an attorney-at-law at one of the leading Polish law firms where he advises clients in matters related to licensing and protection of IP.

Tomasz Targosz, PhD (Jagiellonian University), LLM (Catholic University of America) is an assistant professor in the Chair of Intellectual Property Law at the Jagiellonian University in Krakow. Professor Targosz is also a partner at Traple Konarski Podrecki & Partners specializing in intellectual property law, in particular in copyright and patent law, and in unfair competition and antitrust. He has represented clients in precedential disputes concerning the protection of pharmaceutical patents and copyright protection on the internet, as well as in proceedings before the President of the Office of Competition and Consumer Protection, and in litigation related to appeals against the body's decisions, in cases involving the abuse of a dominant position, competition-restricting agreements, and practices infringing collective consumer interests. Previously, he was a member of the Graduate College of the universities of Krakow, Heidelberg and Mainz, and a visiting fellow at the Max Planck Institute for Intellectual Property, Competition and Tax Law in Munich. He is the author and co-author of scientific publications on civil and commercial law, copyright law and new technologies law, including internet law, advertising and promotion law, media and personality rights including: *Handbuch des Persönlichkeitsrechts*, the monographs *Abuse of Legal Personality*, and *Copyright Transfer Agreements*, a *Commentary on the Act on Copyright and Related Rights*, and many articles in legal journals. He has been a speaker at conferences and training courses in Poland and elsewhere. He has had individual recommendations in Chambers Europe 2020, The Legal 500, Europe, Middle East & Africa 2020, and IP Stars 2020/21.

Preface

We are delighted to present this book. It is the result of a three-year project that was made possible thanks to the generosity and enthusiasm of our authors and other participants in our dialogues.

The project began in 2017. We had each been involved in prior projects that investigated remedies in intellectual property cases on a comparative international basis. Husovec's monograph *Injunctions against Intermediaries in the European Union* (Cambridge University Press, 2017) focused on injunctive relief in intellectual property cases against intermediaries, and Contreras covered injunctions in patent cases in contributions to the edited volumes *Patent Law Injunctions* (Rafal Sikorski, ed., Wolters Kluwer, 2019) and *Patent Remedies and Complex Products* (C. Bradford Biddle et al., eds., Cambridge University Press, 2019). In comparing notes, however, we realized that scholarship on the comparative aspects of flexibility and tailoring of injunctions under patent law continues to pose many unanswered questions.¹ Since the issue was growing in importance, we decided to organize a workshop with a number of leading patent law experts from various jurisdictions to consider the scope of the issues.

This first dialogue was held in June 2018 at Tilburg University, Netherlands, and was entitled *Mapping Flexibilities for Injunctive Relief in Patent Law: What Can the Member States of the European Union and the United States Learn from Each Other?* The discussion included most of the jurisdictions represented in this book, with the exceptions of Finland, Israel and Canada. Each jurisdiction was represented by two experts. One expert was asked to draft a detailed report summarizing

¹ While the subject of flexibility in injunctive relief has been addressed briefly in prior work, it has not previously been the subject of an in-depth study. See, e.g., Cotter 2013, 247–48; Siebrasse et al. 2019, 155–56; Sikorski 2019, 242–47.

the law of injunctions in their jurisdiction, and the second to comment on and validate the findings of that report. In this way, we tried to build solid ground for personal dialogues with the primary goal of deepening common understanding and facilitating the exchange of ideas. This process allowed our Tilburg dialogues to be highly focused, which we hope is also apparent from the contributions in this book.

The participants in the workshop then offered to commit their valuable time to a book project whose goal was to expand the discussion and offer its fruits to a broader readership. To initiate this second phase of the project, we organized a second meeting, this time in beautiful Vienna in conjunction with the annual meeting of the European Law Institute.

To keep the work manageable, we limited our comparative exercise to the transatlantic space only, omitting important jurisdictions in Asia and elsewhere. The book draws its insights from a representative sample of European countries steeped in different legal traditions, the United States, Canada and Israel.²

As with any project, we wish some things had worked out differently. The lives of our contributors were deeply impacted by COVID-19, which made the finalization of the project particularly challenging and prevented us from holding a final symposium to discuss and announce our results, which we hope to conduct once the world has returned to a more normal state.

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² This is not a comprehensive comparison of European law or litigation. For a comprehensive review, see, e.g., EPO 2016.

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