

Trimble on Foreigners in US Patent Litigation

Marketa Trimble (University of Nevada William S Boyd School of Law) has posted *Foreigners in U.S. Patent Litigation: An Empirical Study of Patent Cases Filed in Nine U.S. Federal District Courts in 2004, 2009, and 2012* on SSRN.

One of the greatest challenges facing patent holders is the enforcement of their rights against foreign (non-U.S.) infringers. Jurisdictional rules can prevent patent holders from filing patent infringement suits where they have the greatest likelihood of success in enforcement, such as where the infringer is located, has his seat, or holds his assets; instead, patent holders must file lawsuits in the country where the infringed patent was issued. But filing a patent lawsuit in a U.S. court against a non-U.S. infringer may be subject to various difficulties associated with the fact that U.S. substantive patent law (particularly as regards its territorial scope) and conflict of laws rules are not always compatible and interoperable with the conflict of laws rules of other countries. Such insufficient compatibility and interoperability can lead to U.S. judgments not being enforceable outside the United States.

In the Hague Conference's Judgments Project, which the Conference re-launched in 2012, the United States has an opportunity to negotiate internationally uniform conflict of laws rules to improve cross-border litigation, including cross-border patent litigation. This article provides data on cross-border patent litigation that can be used to assess the extent to which the United States should be concerned about cross-border patent litigation problems and the degree to which the United States should be involved in the Judgments Project to improve cross-border patent litigation.

The statistics in this article are the result of an empirical study of 6,420 patent cases filed in 2004, 2009, and 2012 in nine selected U.S. federal district courts – the federal district courts in which the largest numbers of patent cases per court were filed in 2012. The results show that the numbers of patent cases involving foreign parties are on the rise, although the percentage of such cases in the total number of patent cases filed did not increase from 2009 to 2012. The article brings up to date the author's earlier research on cross-border

aspects of patent litigation, contributes to the rapidly growing body of empirical literature on patent litigation (including the literature on the “patent troll” phenomenon), and enriches the literature on foreign litigants in patent disputes and on transnational litigation in general (both of which suffer from a dearth of statistical data).