

2021 WIPO Intellectual Property Judges Forum

Promoting transnational dialogue among judiciaries

November 10–12, 2021

Report

About the WIPO Judicial Institute

Established by the World Intellectual Property Organization (WIPO) in 2019, the WIPO Judicial Institute collaborates with other relevant WIPO sectors to support the efficient and effective judicial administration of intellectual property (IP), aligned with the national legal traditions, and economic and social circumstances, of Member States.

Information on WIPO's work relating to judiciaries is available on the WIPO website at www.wipo.int/about-ip/en/judiciaries.

Acknowledgments

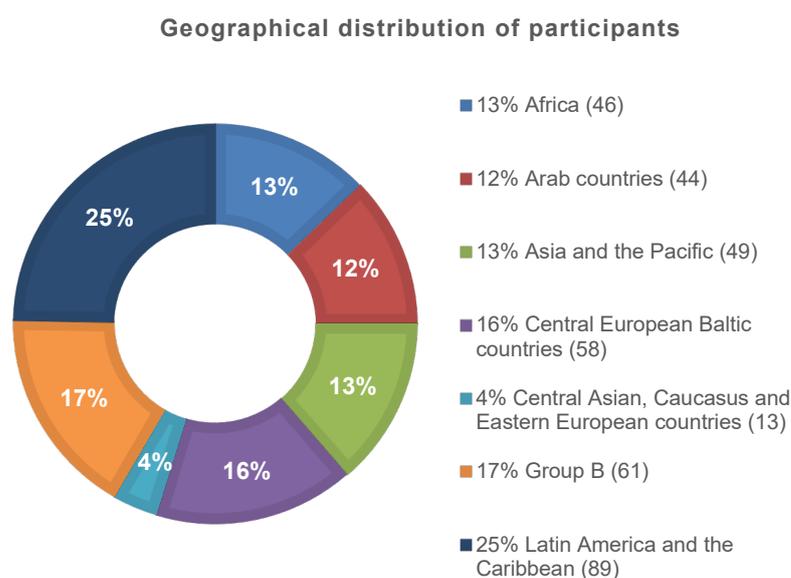
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2021 WIPO Intellectual Property Judges Forum Promoting transnational dialogue among judiciaries

The annual WIPO Intellectual Property Judges Forum aims to provide a platform for judges from across the globe to exchange their expertise on the most pressing intellectual property (IP) challenges raised by accelerating innovation and the increasingly transnational use of IP. The participants observe judicial approaches of other countries and gain insight to strengthen their own courts' analyses. The Forum is part of WIPO's work intended to empower judiciaries to fulfill their vital role in ensuring that IP, innovation and creative ecosystems in Member States are balanced and effective.

The 2021 edition of the Forum was conducted in a virtual format from November 10 to 12, 2021. This year, 360 judges from 88 countries and six regional courts connected over the three days of the program. Twenty-seven speakers from 17 countries and two regional jurisdictions participated as moderators, panelists or lead discussants. All judges spoke in their personal capacity, expressing their own opinions and views and not necessarily those of the Secretariat or of the Member States of WIPO.



A special theme of this year's Forum program was judicial patent case management, with topics covering issues such as distinctive judicial case management challenges for patent disputes, patent invalidity and infringement proceedings, and unique issues in biologic and pharmaceutical patent disputes. The discussions also addressed case management issues of relevance to IP disputes more broadly, such as the role of experts, and damages. The discussion highlighted the differences in how courts approach patent adjudication, but also the similarities, reinforcing the value of judicial dialogue. The active engagement of judges participating from the audience using the virtual chat function contributed greatly to the dynamic exchange of judicial perspectives and approaches from across the world.

The Forum participants expressed appreciation for this cross-border engagement among judges, and for the exploration of common threads and divergences. The high caliber of the speaker judges featured strongly in the overall evaluation of the Forum as an enabler of a stimulating and educational judicial exchange.

The Forum was conducted in six languages (English, Arabic, Chinese, French, Russian and Spanish) with simultaneous interpretation. The program and the list of participants may be accessed on the Forum webpage at <http://www.wipo.int/judgesforum2021>.

The 2022 WIPO Intellectual Property Judges Forum will take place at WIPO Headquarters in Geneva, on November 16 and 17, 2022.

Summary Report

The following summary reports on the discussions which took place during the Forum, and does not reflect the views of any individual participant or WIPO. As the discussions were limited to certain aspects of a small number of sample cases, this summary does not represent the state of the law of any jurisdiction.

All participants took part in their personal capacity.

Opening

The 2021 WIPO Intellectual Property Judges Forum was opened by Mr. Daren Tang, Director General of WIPO, and by Justice Annabelle Bennett, Chair of the WIPO Advisory Board of Judges.

The Director General welcomed the large number of judges participating from across the world during the difficult times of the pandemic. He observed that, as IP, innovation and creativity become increasingly important drivers of growth and development around the world, IP cannot be seen as only of relevance to a small group of IP experts. He also noted the globalization of innovation, as illustrated by the shifting origins of IP filings worldwide. This was why WIPO's new strategic plan, recently endorsed by all Member States, envisions a world where innovation and creativity from anywhere is supported by IP for the good of everyone.

The Director General considered that this vision requires WIPO and the global IP community to step up in several ways: First, WIPO must supplement its traditional activities by helping Members, especially those from developing and least developed countries, to use IP as a powerful catalyst for jobs, investments, business growth, economic development and social vibrancy. Second, WIPO must build a more inclusive IP ecosystem, and find ways to deliver tangible benefits to people and communities on the ground and in every region of the world.

The Director General observed that, in all of these endeavors, Member States need to strengthen their domestic IP ecosystem, which in turn requires that Members establish and build effective and efficient IP judicial institutions. Indeed, given the increasingly central role that the innovative and creative economies play in countries all over the world, the role of IP judges as arbiters of technical questions with significant legal, social and economic implications has become even more important. The recent, high-profile example of the series of cases brought by the owner of the DABUS machine, relating to whether artificial intelligence (AI) systems can obtain patents for inventions generated, illustrated the significance of the task of courts in applying existing law to a new technological landscape under each of their distinct approaches – and sometimes reaching different conclusions.

The Director General reiterated the Forum's purpose as an opportunity for the exchange of experiences and acquired wisdom among jurisdictions, with a view to allowing judges to inform and be informed of how IP law, as well as IP judicial functions, are evolving across different legal, social, and economic contexts, and introduced the year's theme of judicial case management, with a special focus on the particular challenges facing judges in managing patent disputes.

Finally, the Director General expressed his deep gratitude to the members of the WIPO Advisory Board of Judges, who generously provide advice on the direction and content of WIPO's work with judiciaries, particularly in producing the Forum, and welcomed the

participating judges to engage in the judicial conversations to collectively produce a meaningful dialogue.

Speaking as Chair of the WIPO Advisory Board of Judges, Justice Annabelle Bennett observed that the Forum, in addition to being an education opportunity, has become a wonderful tradition, and she welcomed those judges returning to the Forum, as well as those joining for the first time. An important element of the Forum concept was that judges could meet, share the problems and solutions they encounter, and understand the different ways in which judiciaries manage these.

In Justice Bennett's view, this dialogue was even more important this year during a pandemic, when many judges have had to deal with making decisions and hearing cases alone, often without the benefit of seeing the other judges on their own courts. Justice Bennett therefore saw the Forum as an opportunity to be with other judges, even if not in person, for these conversations.

Justice Bennett noted that the topics on the program were chosen because they are real issues being faced by the judges speaking on them. She encouraged the participating judges to freely engage in the opportunities for questions, comments and chats, as a way of taking part in the international community of judges who are dealing with similar cases and similar problems. Many judges present had already had the chance to meet in previous Forums, and knew how beneficial it is to be able to talk to each other, share their experiences and ask questions.

Although the virtual format would not replace in-person interactions, Justice Bennett noted that it had the advantages of permitting judges who would not be able to travel to join the program, and she welcomed the conversations to come.

Session 1: Judicial Patent Case Management

The session introduced the theme of the 2021 Forum – judicial patent case management – chosen in light of the continuing reflections in a number of jurisdictions to enhance the judicial administration of patent disputes. The considerations center on improving access to justice, particularly for individuals and small and medium-sized enterprises, for example by reducing the cost and time burdens of patent litigation, introducing early and active case management, adopting alternative dispute resolution mechanisms, or specializing the judiciary to allow fuller engagement with the technological context in patent disputes. The 2021 Forum aimed to provide an opportunity for exchange of information on the case management tools at the disposal of judges to make the judicial procedure more accessible, fair and effective. In addition, the discussion was intended to inform the WIPO International Patent Case Management Judicial Guide project, a collaboration between the WIPO Judicial Institute and the Berkeley Judicial Institute, to develop a practical guide providing judicial insights and perspectives from nine jurisdictions with significant patent dockets.

The speakers shared the experience of the United States in developing a common approach to judicial patent case management, presenting the significant and deliberate efforts made over the past 50 years to build a consistent and standardized approach, and to provide corresponding judicial education to develop skill sets for patent case management.

The year 1982 was a watershed year in these efforts, when the US Court of Appeals for the Federal Circuit (CAFC) was established. Significant developments took place from the 1990s, driven by the technological revolution and digital technology and a very rapid rise in the number of patent cases. The US district courts had very different case management strategies and their judges, who did not have specialized patent experience, had to develop procedures and strategies to deal with the rising number of cases.

These circumstances led to the birth of the modern patent case management philosophy in the US. It was in part driven by a decision of the USCAFC that held that the interpretation of patent claims lay with the district judge and not with juries, and which led to a shift in the role of district judges, who began taking a more proactive approach in managing cases. There were also efforts, initiated and led by judges, to bring together patent lawyers and academics to develop a set of Patent Local Rules that systematized a consistent approach to the management of cases. The main contours of the Patent Local Rules were specified deadlines for parties' contentions and for early claim construction, providing a systematized approach for a joint, sequenced, staged and timely disclosure process that exposed and prioritized the issues involved in patent cases. These Patent Rules, initially developed in the US District Court for the Northern District of California Northern District, spread to other courts and were followed by a series of annual education programs.

An effort to codify the knowledge ensued through the development of the US Patent Case Management Judicial Guide, first published by the US Federal Judicial Center (FJC) in 2009. The Judicial Guide was used to train a large number of judges, and through these efforts, new and more coordinated systems of patent case management came into place.

The America Invents Act of 2011 introduced the first serious nullification proceeding at the United States Patent and Trademark Office (USPTO), through *inter partes* review and post-grant review, which introduced a rapid timeline for reviewing patents by experienced patent and technical experts sitting in three-judge panels. In addition, the International Trade Commission (ITC)'s Section 337 patent investigation process became increasingly active.

These diverse elements made the US system a much richer system that involves more specialization and accompanying judicial education programs.

The discussion acknowledged that each country would have its own distinct judicial system, and its accompanying judicial culture and practices. Nonetheless, it was hoped that that the forthcoming International Patent Case Management Judicial Guide would identify the common skill sets that would be useful and find application jurisdictions beyond the nine contributing countries.

References:

- Federal Judicial Center, United States of America [2016]: [Patent Case Management Judicial Guide](#) (3rd ed.)
- Federal Judicial Center, United States of America [2019]: [Patent Mediation Guide](#)

Session 2: Distinctive Judicial Case Management Challenges for Patent Disputes

This session and its accompanying “Reflections” segment addressed the most common challenges faced by judges in the case management of patent disputes. As a first step, the speakers introduced the judicial structures responsible for patent disputes in their jurisdictions, revealing a diversity of legal and judicial systems, levels of specialization and division of competence.

For example, in Australia, patent disputes are decided at both the first and second instance by specialist judges within the Federal Court of Australia who, despite being generalist judges, possess specialized experience in IP disputes. In the similarly common law jurisdiction of South Africa, patent proceedings may only be heard at first instance by the specialized Court of the Commissioner of Patents. The Commissioners are judges of the High Court designated for this purpose, and will, where possible, be judges with IP experience. Since 2018, the applicable procedures fall under the Commercial Court in the Gauteng Division of the High Court of South Africa, which was recently reconstituted under procedural directives that empower judges to actively conduct case management.

Another perspective was provided from Brazil, a civil law system in which judicial procedure is defined in the legislation, litigation is primarily conducted in written form, and formalism is used to ensure due legal process. Further, in Brazil, a dual legal system divides competence over patent disputes between federal courts, which have jurisdiction to handle patent validity matters, and state courts, which decide on issues of infringement. In both federal and state courts, the bench is composed of generalist judges. Although there is no national specialized IP court, some degree of specialization does exist in jurisdictions where IP disputes are concentrated: at the federal court of Rio de Janeiro, four specialized trial courts and two specialized appellate panels deal with validity disputes in IP in general; at the state court of São Paulo, specialized trial courts and appellate panels exist for commercial matters, which include IP cases.

A further differing approach was shared from China, where a multi-tiered system of specialized IP courts have been established throughout the country, including four regional IP courts in Beijing, Shanghai, Guangzhou, and Hainan Free Trade Port, as well as the Intellectual Property Court of the Supreme People’s Court (SPC). The IP Court of the SPC was established in 2019 to harmonize patent and technology related IP appeals nationwide, and has also had the effect of harmonizing trial criteria for such cases. In addition, 24 IP tribunals have been established with cross-regional jurisdiction over IP cases. It was observed that patent cases are the primary type of disputes heard by these IP courts and tribunals.

It was noted that, in a number of jurisdictions, patent proceedings are conducted under normal civil procedure rules. However, levels of discretion exist for judges to adapt procedures to suit the particularities of patent adjudication.

Against this backdrop, the session covered the case management issues that arise at each stage of patent proceedings, from pre-trial, to trial and post-trial phases.

In countries such as Australia and South Africa, judges take an active role in case management. At the pre-trial stage, depending on the size of the case, several case management hearings will be held, permitting the judge to gain an early understanding of the patents and claims and the complexity of the technology involved, as well as receiving an indication of the likely defenses and cross-claims. This early understanding enables the judge to direct the parties in preparing agreed technology primers to assist in technical fact finding. Such hearings also provide opportunities for judges to manage the scope of the dispute, for example by encouraging the parties to limit the claims at issue, or by managing interlocutory arguments about the scope of pleadings, discovery, or confidentiality and privilege. It was observed that providing an informal indication of views may more efficiently resolve issues that do not need to proceed to full argument, to ensure that the resolution of the dispute is not unnecessarily delayed. The case management hearings may also be used to determine with the parties, and to regulate, the scope of expert testimony. Determining a timetable for the case at the earliest stage, and ensuring that it is adhered to, was also considered an essential part of case management. By contrast, in Brazil, patent proceedings are conducted largely in writing, there is no pre-trial phase, and instructions hearings are only scheduled if deemed necessary by the judge.

It was acknowledged that active case management requires an allocation of judicial time and resources, which are limited. This may be a reason why, in some jurisdictions, active judicial management is confined to the largest cases.

Turning to the trial stage, it was observed that of the jurisdictions represented, only in the US are jury trials used in patent litigation. In the other countries, patent disputes are heard by a bench, whether composed of a single judge or a panel on appeal. In the jurisdictions represented, most patent cases go to trial unless the parties settle first.

There was considerable discussion among the panel, as well as with participating judges in the audience, regarding the bifurcation of patent proceedings between validity and infringement matters heard by different courts. The structural reasons for the development of this bifurcation, and the advantages and inefficiencies of hearing issues together or in succession, were explored. It was noted that in jurisdictions adopting bifurcation, even where validity and infringement hearings may be conducted in parallel in theory – such as in Brazil – the interplay of validity and infringement issues may impact the possibility of both proceeding together in practice. In the US, it is also possible for validity challenges to be heard in an administrative process at the Patent Trial and Appeal Board of the USPTO, while a trial is being conducted at the District Court level. In Israel, infringement cases can be heard only by district judges, while the patent office deals with questions of validity; nonetheless, counter-claims for validity can also be raised in the infringement proceedings and heard together.

In Australia and South Africa, the default practice is to run validity and infringement together in the same trial. One benefit of this approach is considered to be the interface between arguments about the breadth of a claim for the purpose of determining validity, versus those relating to infringement.

On the issue of evidence, it was common practice across both civil and common law jurisdictions for written evidence to be exchanged between the parties. Other approaches to receiving expert evidence were more particular to each jurisdiction.

On the topic of dealing with expert evidence submitted by the parties, procedural rules in Australia and South Africa allow considerable management of expert evidence in order to identify common ground and differences. In South Africa, the use of these provisions is not yet widespread in patent cases, but is growing. In Australia, experts are required to meet in an expert conclave after having exchanged written evidence, in order to prepare a joint expert report (JER), which greatly helps to narrow the areas in dispute. At the trial itself, the experts give oral evidence concurrently in a “hot tub”, where they may ask each other questions and are also cross-examined by advocates.

On the topic of court-appointed experts, it was reported that, in China, a specific category of technical investigators assist the court in patent trials. Technical investigators may participate in investigation and evidence collection, as well as oral proceedings such as inquiries, pre-trial meetings and trial hearings, and may further attend the deliberations of the judicial panel. The investigator’s participation in the proceedings is transparent: their identity must be stated in the judgment document. Where technical investigators attend case review deliberations, their technical opinions are recorded in the deliberation transcript. The technical opinions provided may serve as a reference for judges in finding technical facts, but the investigator does not have a right to vote in the judgment of the dispute. It was noted that a technical investigator has a different role from an expert witness, who appears in court on behalf of parties.

Court-appointed experts, more generally, are also used in other jurisdictions, such as Brazil, Germany, Israel and the US. For example, in Israel, scientific advisers may be appointed by the court in patent cases. Whereas in Brazil and Germany party experts are considered as part of the parties’ submissions and only the court-appointed expert is a source of formal expert evidence, in the US the testimonies of both party- and court-appointed experts are treated as expert evidence. By contrast, in Australia, although the court has the power to appoint experts, this power is not used.

These differences among jurisdictions were the subject of significant interest and discussion among the panelists and participants. The questions raised included matters of transparency and public scrutiny of the judicial process, due process for parties who must be exposed to all evidence and have an opportunity to respond, and the role of a judge in being the final decision-maker. It was acknowledged that different scientific views may genuinely be held on opposing sides of an argument at crucial points, and that it is the role of a judge to navigate these differences.

Mediation was also raised as a standard part of patent adjudication in some jurisdictions. For example, in Australia, the practice is to refer all cases to mediation, except in circumstances where the judge is satisfied that there is not a good prospect of success. The Federal Court itself provides Registrars who are empowered to conduct mediation, or parties can appoint their own mediator. In South Africa, mediation must be considered by the parties and is raised before the matter proceeds to trial, but is not obligatory.

Turning to the final stage of patent proceedings, differences were observed in the judicial proceedings for dealing with quantum of damages across countries. In Australia, Brazil and South Africa, it was noted that the question of quantum is heard separately, and after validity and/or infringement. One benefit of this approach was that, if the plaintiff is not successful, the court need not conduct the hearing on quantum.

It is common practice across the jurisdictions represented to award compensatory damages, but enhanced damages are not used in Brazil or South Africa. In Australia, although most damages awarded are compensatory, limited additional damages may be granted where there are aggravating elements. This question is addressed by the court in the quantum portion of the trial. In contrast, in China, since the introduction of a new Patent Law in 2021, punitive damages of up to five times the damage caused are additionally available in cases of intentional and serious infringement. A judicial interpretation issued by the SPC provided greater guidance for the application of such punitive damages in civil IP infringement trials.

In conclusion, it was observed that some challenges of judicial case management of patent disputes arise commonly across jurisdictions, while others are specific to particular legal systems or judicial cultures. Even where similar concerns are faced by judiciaries, they may be managed differently.

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Session 3: Decision Makers and the Role of Experts in Patent Disputes

This session and its accompanying “Reflections” segment explored one of the central aspects of patent case management: how do judges acquire the technical knowledge necessary to decide a patent case, and what is the role of experts in this context? Since patent litigation involves all kinds of technologies and scientific applications, judges are consistently required to acquire a clear understanding of a specific technical field in order to consider a dispute. As the speakers illustrated during the discussion, the complexities involved in handling expert evidence, as well as varying levels of technical training of the judges who may hear patent litigation, make this a challenging aspect of judicial patent case management.

As a starting point, the panel discussed the different levels of technical training of judges across their respective jurisdictions. In countries such as the US and Singapore, patent cases are heard by mostly generalist judges whose qualifications are legal. It may arise that a legally qualified judge also has a technical background; however, this is not a requirement. In other represented jurisdictions, particularly where there is a specialized patent court, the bench may comprise both judges qualified in law together with judges qualified in a technical field. For example, panels at the Federal Patent Court of Germany are composed of judges with a legal background and of judges with a technical background who have a qualification in the technology of the patent-in-suit. In the Patent Court of the Republic of Korea, the bench may include judges who are technically trained in addition to their legal qualifications. It was also noted that, in some countries, courts and judicial training authorities provide continuing training to sitting judges in targeted technical fields, such as biopharmaceuticals and chemistry, and also in handling and understanding patent cases in general.

The panel also highlighted the different ways in which judges become familiar with the technological and economic aspects of the patent involved during the proceedings, both formally and informally. Informally, judges may benefit from technical knowledge from a number of sources – depending on the jurisdiction, this may be from their own technical background or that of their law clerks, or from party representatives who in some

circumstances provide tutorials – in addition to the formal expert evidence that is received by courts under the specific procedural rules of each jurisdiction. This expert evidence may be given by expert witnesses engaged by the parties, or appointed by the court, or both. The speakers acknowledged the challenges faced by judges in ascertaining the credibility of party-appointed experts and in weighing differences among expert opinions received. Some of the mechanisms used by courts to assess expert credibility or reconcile differing evidence included: examination of the methodologies used by experts and their qualifications; the use of cross-examination by the opposing counsel, or direct questioning from the bench, to test the evidence presented by experts; the use of concurrent evidence (in some jurisdictions referred to as expert “hot tubs”) that allow opposing experts to directly engage with the others’ evidence; and expert witness conferences, where experts have the opportunity to present and discuss their views in a non-adversarial setting.

The panel also explored the scope of the role played by appointed experts in patent case litigation. This discussion was centered on the distinction between questions of law and questions of fact. The speakers considered that, in their jurisdictions, the role of experts lay in answering questions of fact that require a high level of technical knowledge in the specific technology being litigated. For example, questions of fact could relate to the general perspective of the person skilled in the art at the priority date: her knowledge, abilities, experience and methodological approach; the disclosure of a prior art document; the properties of an allegedly infringing product; and the functioning of an allegedly infringing production process. In contrast, depending on the jurisdiction, questions of law could include claim construction, and assessment of novelty, inventive step or added subject matter.

However, the discussion revealed that this distinction may present challenges for judges in practice. For example, some speakers pointed to questions of law relying on questions of fact, and there being a need for the judge to manage the expert evidence to ensure that it is properly directed to the questions of fact. The panelists highlighted the importance of the interaction between the judge and the expert in a number of ways throughout the case management process: for example, by obtaining expert written reports early; asking focused questions; and seeking to clarify the points of agreement and disagreement between experts.

Finally, it was emphasized that, even though experts play an important part in patent litigation, judges are not bound by their opinions. To decide a case, judges will take into consideration other sources of information, such as patent specifications, relevant technical documents, and arguments from the parties, amongst others.

References:

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WIPO’s Work in the area of the Judicial Administration of IP

The session provided an overview of WIPO’s work in the area of the judicial administration of IP, which is intended to empower judiciaries to fulfill their vital role in ensuring that IP, innovation and creative ecosystems are balanced and effective, and to contribute to providing IP-related knowledge and data to a wider general audience.

It was noted that that this work is organized under three pillars: fostering transnational judicial dialogue; strengthened judicial capacity building; and facilitating access to IP legal information, including laws, judicial systems and decisions on IP. The overarching principles

that guide WIPO's work with the judiciary include: recognition of the diversity of national judicial structures and approaches; emphasis on national ownership and sustainability; and prioritization of judicial perspectives, receiving direction in particular from the WIPO Advisory Board of Judges.

Under the first pillar of transnational judicial dialogue, the annual WIPO IP Judges Forum is the flagship event, the expanding participation in which reflects the growth of the global community of IP judges. In addition, judicial colloquia, such as the WIPO Webinars for Judges, addressed timely topics through panel discussions on recent judicial rulings.

Exchange of information is also fostered through publications, including the *WIPO Collection of Leading Judgments* series, which, in 2022, will see the addition of decisions of the courts of the member States of the African Intellectual Property Organization and the Russian Federation in 2022. *An IP Benchbook for the Philippines and Viet Nam*, as well as the *International Patent Case Management Judicial Guide*, are expected to be released in 2022, both authored by prominent jurists in key jurisdictions.

The second pillar of WIPO's work with judiciaries is to strengthen judicial capacity building, aiming at the establishment of long-term, sustainable judicial education programs on IP in interested Member States. These projects comprise multiple deliverables that include a distance learning course offered by the WIPO Academy, drafting of resource materials, as well as train-the-trainers programs.

The third pillar is to facilitate greater access to IP legal information, and WIPO Lex – a one-stop gateway to some 50,000 IP laws, treaties and judgments – was presented.

Finally, the services of the WIPO Arbitration and Mediation Center were noted in providing alternative dispute resolution options for cases pending before courts.

Session 4: Patent Invalidity / Nullification Proceedings

This session and its accompanying "Reflections" segment explored the management of patent validity and nullification proceedings, illustrating a wide variation among the represented jurisdictions as to how, when, where and by whom patent nullity is determined.

Patent validity is challenged in two primary ways in patent disputes: as part of a defense to an infringement claim, or in a direct application for revocation of the patent by virtue of its alleged invalidity. Challenges to patent validity may also arise in other contexts, including in proceedings in relation to actionable threats which may be justified; in proceedings seeking a declaration for non-infringement; or, in the European Economic Area, in assessing the validity of a supplementary protection certificate.

In Japan and in the Andean Community, the key technical determinations on patent validity are made through administrative processes. While there is an opportunity for judicial review, such intervention usually occurs only when there is an invalidation defense in a patent infringement suit before a court. In Japan, the administrative procedure has the benefit of the decision by the Japan Patent Office being effective vis-à-vis third parties, whereas an invalidation decision by a court in an infringement suit would not form part of the court's holding and therefore have limited effect outside the case. Similarly, in the Andean Community, the authority resolving the infringement issue does not have competence to invalidate the patent. The patent infringement and invalidation actions run in parallel, but closely related proceedings.

In the Netherlands, the United Kingdom and the US, judges have plenary power to determine patent validity and frequently preside over adversarial proceedings in which validity is raised. In the UK, an action to revoke a patent may be brought either to the courts or to the Comptroller General of the Intellectual Property Office. Most commonly, revocation applications are heard by the courts. The judicial process in the UK offers the benefits of a specialized bench, including judges who have scientific (in addition to their legal) qualifications, as well as judicial mechanisms for disclosure and cross-examination. In the US, judges have specialized knowledge at the appellate level, but not always in first instance proceedings where judges in district courts are mostly generalists and acquire expertise over time. In the Netherlands, validity issues concerning national patents are addressed before the court, as the Patent Office does not undertake examination of patentability requirements. The Court of the Hague has exclusive competence to hear patent cases and its judges, while not technically trained, have the ability to understand and deal with technical issues. European patents may be attacked after grant either before the European Patent Organization or before national courts. In discussing these differences, the panel highlighted the importance of the decision maker's expertise, whether in an administrative or a judicial process.

In terms of time limits for when validity can be challenged, there was no general constraint in most jurisdictions. When validity is a counterclaim for an infringement, the limitation period for bringing a claim for infringement would apply. In the Netherlands and in the UK, the question of the patent's validity may also arise after the expiry of the patent: for example, in relation to the validity of a supplementary protection certificate, in licensing disputes or where there are questions of negligence. It was further noted that, in the UK, it was common for the question of validity to be engaged towards the second half of the life of the patent, as generics will be interested in looking at the validity of the patent only once they have their own marketing authorization, obtained upon the expiry of the data exclusivity protection of the patentee's marketing authorization data.

The panel discussed the role of judges in claim construction. In the US and in the UK, judges are actively involved in determining the meaning of the claims of the patent as part of validity proceedings, and most patent infringement actions involved an invalidity defense, with claim construction often being the determinant of the case. On the other hand, judges do not get into the fine points of claim construction in Japan and in the Andean region, where judges may need to determine whether there is infringement of the patent as construed by the administrative agency.

Next, the panel explored how unpredictable results and unexpected advantage may affect patent validity. It was noted that the concept of unpredictable results could play out in different ways, depending on the reason for the unpredictability. The decision of the Supreme Court of Japan was shared, where the court adopted the theory that unpredictable effect is an independent requirement for inventive step. The panel discussed how unexpected result or unpredictable advantage may be relevant in the context of the obviousness analysis as an effect has to be unpredictable or not reasonably expected for an invention to be non-obvious. When the result is unpredictable because the invention combines concepts from two different technical fields, the Court of Appeal of England and Wales decided that it is important to identify the skilled person as having different characteristics for the purposes of obviousness and reading the prior art, from the characteristics that the skilled person has for the purposes of reading the patent and putting the invention into effect. In addition, an unexpected effect may also be relevant by reference to the plausibility of patents. There were possible problems which might come about if the unexpected effect itself is not properly described or explained within the specification of the patent and the patentee is unable to rely upon them. An unexpected effect that is not plausibly disclosed at the application or priority date, is to be disregarded when assessing inventive step or may lead to insufficiency.

Finally, the panel shared approaches to technical reports, produced either during the administrative or judicial proceedings, and the related question of due process for decisions made at the administrative level that are based on technical reports but not subjected to the adversarial process seen in court litigation. The discussion started with the Preliminary interpretation from the Andean Court rendered in 2020, which drew a distinction between the technical reports of experts that qualify as evidence and can be reviewed by parties, and the technical reports rendered by experts of an IP office that form part of the IP office's determination on patent nullity and are not subject to review by parties and the adversarial approach. In the Netherlands and in the UK, court appointed experts are rarely used. When they are used, this is done with full transparency and engagement of both parties: parties are allowed to make representations as to whether or not there should be a court-appointed expert and all materials provided to the judge by the expert will be provided to the parties with an opportunity to comment.

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- Court of Appeal of England and Wales [2010], [Schlumberger Holdings Ltd. V. Electromagnetic Geoservices AS \[2010\] EWCA Civ 819](#)
- Court of Appeal of England and Wales [1991], *Hallen Co. v. Brabantia UK Ltd.* [1991] RPC 195

Session 5: Patent Infringement Proceedings

This session and its “Reflections” portion addressed the topic of patent infringement proceedings through the lens of two kinds of cases: those involving indirect infringement, and infringement by equivalence. It also touched upon specific practices relating to evidence in patent infringement cases.

To begin with, the distinction between direct and indirect infringement was made. For example, whereas direct infringement of a product claim may involve the unauthorized sale of the patented product, the question of indirect infringement could arise in the sale of a kit of parts that can be assembled to obtain the claimed product.

It was observed that indirect infringement was not treated uniformly across jurisdictions. For example, specific statutory bases for protection against indirect patent infringement exist in Germany and in the UK, where the legal tests are similar and recognize indirect infringement on the basis of the supply of any means relating to an essential element of the invention. On the other hand, in India, alleged infringement based on a part or combination of parts of a product would not be recognized as indirect infringement. Some exceptions to this approach may exist in narrow circumstances, but these are not explicitly provided by statute, and are determined on a case-by-case basis. Possible examples may involve a part that constitutes a dependent claim of the patent, or a context in which the part has no other recognized use other than forming a part of an infringing product.

A varying perspective was provided from the Russian Federation, where the concept of indirect infringement is not explicitly provided for by legislation. However, precedent did exist for enforcing patent protection in circumstances involving a threat of infringement, which could be considered as a form of indirect infringement. One case presented involved discussion on whether the grant of regulatory approval for an allegedly infringing medication and subsequent entry into government contracts for its sale at fixed prices, prior to the

expiration of the patent, could constitute a threat of infringement leading to an injunction. It was noted that the obtaining of a marketing license in itself, without further action to sell infringing products before the expiration of the patent, may not be sufficient for the grant of an injunction in some jurisdictions such as the UK. The interplay of patent law with concepts under other areas of law, such as competition law, were also raised in this context. It was noted that the concept of abuse of right may have consequences for the award of injunctions in patent infringement cases, though no uniform practice emerged among the jurisdictions represented. In Germany, although statutory provision for denial of an injunction on the basis of abusive practice exists, it is infrequently used, except in cases involving Standard Essential Patents (SEP).

Turning to the topic of infringement by equivalence, it was noted that this kind of infringement proceeding was not commonly used across all jurisdictions. However, some similarities did exist in the approach to equivalence in the jurisdictions discussed, such as India and Germany.

The German approach to determining alleged infringement that involves a variant of the features of a patent claim was shared, including the equivalence tests developed by caselaw. It was noted that claim construction was the fundamental basis for any such examination. In Germany, the specific approach to claim construction had been elaborated in detail by jurisprudence. It was also observed that consideration of the technical effect of the variant in comparison to that of the claim was relevant in both India and Germany. The cases shared also touched upon specific questions arising in claim construction, such as whether the patentee has exercised a positive selection decision to limit protection sought to only the embodiment described, which in the UK may be described as “disclosed and not claimed”. In India, the questions of coverage and disclosure are frequently brought before the courts in cases involving pharmaceutical products, for example requiring determination of whether a specification in a subsequent patent is enabled in the earlier patent. On the other hand, a doctrine of equivalence has not yet been explicitly provided in the Russian Federation, where such cases have arisen infrequently so far, and are decided on a case-by-case basis.

Finally, the panel heard about the framework for handling of evidence in patent disputes in India, involving both oral and written evidence, cross-examination, evidence from experts and technical persons (including concurrent evidence in the form of “hot tubbing”), and specific processes for cases involving SEPs. It was observed that these general rules found analogies in the civil litigation rules of other jurisdictions, including in France. Further, whereas the common approach to burden of proof – whichever party asserts a fact must prove it – applies in patent infringement disputes involving a product claim, a varied burden of proof applies in respect of infringement of a process claim: In such cases, if the plaintiff proves that the products resulting from the claimed process and the allegedly infringing process are identical, the burden shifts to the defendant to prove that the process used is different.

In general, the panel observed that law and jurisprudence governing these less common forms of patent infringement were developing at different speeds in different countries. However, they predicted that such cases will likely be brought in jurisdictions that have not yet received these disputes, in future, as litigants seek effective fora for their dispute resolution.

References:

- Federal Court of Justice, Germany [2016]: BGH GRUR 2016, 1254 – *V-förmige Führungsanordnung*
- Federal Court of Justice, Germany [2002]: BGH GRUR 2002, 515, 517 – *Schneidmesser I*

- Delhi High Court, India [2017]: *Micromax Informatics Ltd. vs. Telefonaktiebolaget Lm Ericsson*, FAO(OS) (COMM) 169/2017 & CM No.40001/2017
- Delhi High Court, India [1977]: *Raj Prakash vs. Mangat Ram Chowdhry and Ors*, AIR 1978 Delhi 1
- High Court of Bombay, India [1935]: *Lallubhai Chakubhai Jariwala vs. Chimanlal Chunilal and Co.*, AIR 1936 Bom 99
- IP Court, Russian Federation [2018]: *Celgene Corporation vs. Farmsintez JSC, BratskHimSintez LLC, Ministry of Public Health*, Case No. A40-170151/2017
- IP Court, Russian Federation [2019]: *Clauser vs. Rospatent; Putarakin (intervener)*, Case No. SIP-540/2017

Session 6: Unique Issues in Biologic and Pharmaceutical Patent Disputes

This session opened by acknowledging the level of public interest in the topic of biologic and pharmaceutical patents in the current global context of the Covid-19 pandemic. It focused on two fundamental concepts, both of which related to the question of what an inventor can patent: first, what happens when an existing patented pharmaceutical product is found to have another medical use? And second, how much information is required to be disclosed in a patent application to support its claims, for example where results of a pharmaceutical compound are predicted but not established by the specification data, or where a described process does not extend to all the products claimed? It was noted that there is no settled, universal jurisprudence to respond to these topical questions; while some cases have been decided in some jurisdictions, these decisions are based on distinct national statutory frameworks. Although similarities in the basic concepts underlying national legislation could be observed across jurisdictions, the judicial outcome would be shaped by the precise formulation of statutory provisions, as well as different and complex public policy approaches to the stimulation of research and innovation, and judicial appetite or reticence for responding to public policy developments.

The discussion first turned to second medical use. This concept was illustrated by reference to the framework governing first and second medical use under the European Patent Convention (EPC), which provides that a substance or composition for which a first medical use is already known may be patentable for a second or further use in a method, if that use is novel and inventive. It was noted that these specific rules relating to first and second medical use claims were provided under the EPC as a consequence of the exclusion of medical methods from patent protection. The provisions governing the definition of first and second medical uses, the scope of patentability and format for claiming second medical use, and the protection conferred under the EPC, were introduced. The discussion reflected on the challenging questions that arise in the application of these concepts. Outside the EPC, whether medical and diagnostic methods practiced on the human body are patent eligible, and under what conditions, vary across jurisdictions and depend upon national statute.

It was noted that a common approach to validity could be said to exist across EPC jurisdictions, since both national courts and the European Patent Office (EPO) apply the EPC patentability rules in granting or revoking patents. What's more, national courts consider (and often follow) the interpretations of these rules provided by the supranational EPO Boards of Appeal, when determining the validity of patents granted under the EPC. However, such harmonization does not exist for infringement questions, which are a matter for national courts.

Another perspective was provided from China, where methods for the diagnosis or for the treatment of diseases are similarly excluded from patentability. However, it was noted that,

in China, claims for medical uses (whether first or second uses) are treated as method claims, and may be patentable when formulated as “Swiss-type” claims, i.e. as a claim for the pharmaceutical use of a substance in the preparation of a medicament for treating a disease. It was noted that the Guidelines for Patent Examination issued by the China National Intellectual Property Administration (CNIPA) specifically provide for such consideration of medical use claims. This approach differed from that of the EPC, under which a further medical use claim is considered a claim directed to the use of a substance, and not a claim directed to the method.

The challenges that arise in the patentability of claims in this context were described, such as challenges on the grounds of obviousness and insufficient disclosure. These issues were adjudicated in a significant 2006 ruling by the Beijing No 1 Intermediate People's Court that found Pfizer's claim for the second medical use of sildenafil citrate (Viagra) to be patentable. It was also noted that in 2021, an “early resolution mechanism for drug patent disputes” was established in China, connecting drug marketing review and approval procedures with judicial patent dispute resolution proceedings, among other things. The mechanism enables parties to resolve disputes relating to certain pharmaceutical patents and medical use patents for biologics either through the administrative or judicial routes.

The discussion then turned to questions relating to whether the information in a patent application is sufficient to substantiate the breadth of the claim made, acknowledging the significance of sufficient disclosure in determining patentability of claims in the pharmaceutical sector. The specific characteristics of the pharmaceutical context in which these questions arise was acknowledged, such the timelines for drug development, the importance of achieving the appropriate level of protection for innovation, and the level of data required to determine the inventiveness of patent claims given the highly specialized nature of the field.

The panel provided an overview of how supplementary data is treated in their jurisdictions – specifically, whether data produced after the filing of a patent application (its priority date) can be considered in determining patentability of a claim. In China, this question has been an important issue in recently enacted national reforms. A binding judicial interpretation issued by the Supreme People's Court of China in 2020 provides that supplementary experimental data filed after the application date should be reviewed by the court.

The concept of plausibility, as developed by caselaw of the EPO Boards of Appeal and national courts under the European legal framework, was introduced. The specific context of second medical use claims illustrated some of the issues that arise, for example in the tension between the requirement of novelty (incentivizing early filing of an application), and the requirement for a plausible technical contribution to be disclosed in the application (requiring some data). The difficulties in assessing which data are required to support the technical effect described in an application, and to establish whether an invention was complete at the priority date or was speculation, were mentioned. Importantly, it was highlighted that such questions do not have settled answers, and are the subject of ongoing consideration in a referral made to the EPO Enlarged Board of Appeal in 2021.

The session concluded by acknowledging the complexities for judiciaries in dealing with patent disputes involving biologic and pharmaceutical products.

References:

- Beijing No.1 Intermediate People's Court, China [2006]: *Pfizer Ireland Pharmaceuticals v. State Intellectual Property Office of the People's Republic of China, Patent Re-Examination Board*, Administrative Ruling (2004) Yi Zhong Xing Chu Zi No. 884

- [Guidelines for Examination issued by the China National Intellectual Property Administration \(CNIPA\)](#), China [2010]
- Supreme People's Court, China [2020]: [Provisions of the Supreme People's Court on Several Issues concerning Application of Law in Trials of Administrative Cases on Patent Granting and Invalidation \(I\)](#)
- European Patent Office [2019]: [Case Law of the Boards of Appeal, Section I.C.7, "First and second medical use"](#)

Session 7: Damages

This session focused on damages, as a final form of relief and outcome for claimants in a patent infringement case.

The discussion began with an overview of the different types of damages upon a finding of patent infringement, while acknowledging the differences depending on the legal system. It was explained that, in India, damages in patent infringement cases could be compensatory/restitutionary (for example, in the form of lost profits, rendering of accounts, or reasonable royalties), indirect, or punitive.

The speakers discussed enhanced damages, also referred to in some jurisdictions as "punitive" or "exemplary" damages, which allow courts to make an order for damages that exceed the measure for compensation in circumstances of willful infringement or other aggravating factors. These are available in some but not all jurisdictions. In the Republic of Korea, a recent legal reform of the Patent Act introduced enhanced damages, and the amount awarded can be up to three times the amount of compensatory damages; however, the legislative changes are recent, and there have not yet been any cases where the court has awarded enhanced damages under these provisions. The panel also raised the question of whether enhanced damages are a compensation or a punishment, and the concern of double punishment, when criminal sanctions are also provided.

The session turned to focus on three methods for damage calculation that were provided in the Republic of Korea as well as envisioned in the Unified Patent Court (UPC): lost profits of the patent owner as a result of the infringement, profit made by the infringer as a result of the infringement, and a reasonable royalty rate, estimated as the amount a licensee would pay for the rights to the invention. It was observed that, using the first method, the calculation of lost profits could result in large awards of damages, but that it may be difficult to provide sufficient evidence to prove the extent of the loss. The second method of accounting for the profits of the infringer is frequently used by courts in these jurisdictions. It is commonly based on two general formulas: revenue minus costs, and revenue multiplied by profit ratio. For the third method, it was emphasized that courts may consider different factors to determine the reasonable royalty, including the objective value of the patented technology, and evidence of existing licensing agreements with a third party, amongst others. Lastly, in the Republic of Korea, where there is insufficient evidence to prove the facts necessary to establish the amount of damages under the three aforementioned methods, courts can exercise discretion to calculate the amount based on the overall arguments and the evidence provided.

Among the challenges faced by courts in the calculation of damages, the difficulty of gathering evidence was common across the jurisdictions, due to the lack of information possessed by the claimant regarding the infringers' activities and accounts. Another challenge relates to the limited use of damage-experts, resulting in most of the damage calculation being done by the judges themselves. Lastly, the panel addressed the challenge of calculating the contribution rate in cases involving multiple patents, since there are many

factors that need to be considered when determining the extent (as percentage value) to which a patented invention contributed to the value or sales of a product. The considerations include the indispensability, significance, price ratio, or quantitative ratio of the patented invention to the multi-component product, amongst others.

The approach of the UPC to damages was also shared. Once established, the Court will have exclusive competence vis-à-vis the contracting Member States to the Agreement on a Unified Patent Court for European patents with unitary effect, and European patents that have not been opted out from the UPC's jurisdiction during the transition period. It was emphasized that UPC regulations provide that damages shall not be punitive; however, they also provide that the infringer shall not benefit from the infringement, which could result in the award of enhanced damages by including not only the loss of the injured party, but also the profit of the infringer. The UPC is expected to offer different procedural routes to recover damages and legal costs. In addition, it will have an arbitration and mediation center that will allow for the settlement of damages. However, it was noted that the UPC could face some challenges arising from the potential conflict between its rules and the national regimes of the participating Member States.

Lastly, views were exchanged regarding legal costs and ceilings for the recovery of legal costs. This prompted a discussion of whether ceilings could be a detriment to patent right holders or a reasonable amount of recovery.

References:

- High Court of Delhi, India [2018]: *Koninklijke Philips v. Rajesh Bansal and Koninklijke Philips v. Bhagirathi Electronics*, CS (COMM) 24/2016 and CS(COMM) 436/2017
- Patent Court of the Republic of Korea [2018]: Case No. Na1893
- [Agreement on a Unified Patent Court](#) of 18 February 2013, 16351/12
- [Preliminary Rules of Procedure of the Unified Patent Court](#) 2017

Roundtable: Future of Judicial Patent Case Management

The Roundtable reflected on the major directions emerging in patent case management and its future, with panelists referring to case management tools that they thought particularly helpful or challenging.

The discussion began with the panel's views on the advantages and the disadvantages of new technologies for patent case management. Panelists observed many benefits to the use of technology, with divergences among panelists with regard to its limitations.

Experiences with the use of remote hearings, which became frequent during the Covid-19 pandemic, were shared. A number of benefits of remote hearings were noted. They were found to be effective especially in short hearings such as case management hearings, and to promote both efficiency and access to justice, such as by facilitating participation by parties and witnesses in geographically distant locations or who have difficulty interacting in a court setting.

At the same time, a number of concerns were raised. One risk was a loss of judicial presence or a diminished role of the judge, as a result of judges being presented as one of many faces on screen, with little distinction from other actors in the proceeding. The value of in-person interactions and non-verbal communication in the courtroom was also recognized. Some panelists noted the challenges for judges in "reading the room" during remote hearings and expressed a preference for having witnesses in the courtroom, in order to exercise full control over the taking of evidence. There were also questions on how to safeguard security

and confidentiality, which are frequently of concern in patent cases. The benefits of conducting remote hearing may also be different for judges at different levels. For example, where a case is heard by a panel of judges, it may be more practical for the members of the bench to be in the same room. On the other hand, remote hearings may be more challenging for first instance court judges in comparison to appellate court judges. Finally, there was also concern that the ease of video technology may lead to it being used by default too frequently without proper consideration of its appropriateness to each instance, as well as the lost opportunity to train new lawyers in courtrooms.

While acknowledging that remote hearings will increase in significance in future, the panel indicated diverging views on the ideal scope for the use of virtual hearings in judicial proceedings. On the one hand, there was the view that a hybrid approach should be promoted, allowing parties the option to choose whether to participate in person or remotely by video. On the other hand, it was noted that some of the concerns arising from the use of technology, such as the ability to assure confidentiality, were not so different from similar concerns arising in the courtroom and could be significantly mitigated by a well-designed remote hearing system, distinct from common video-conferencing platforms, that can provide a private environment for judges, place the advocates in specific positions, and allow chat rooms for parties to meet separately as required.

The panel also discussed other technological advances being used in courtrooms, such as computer systems that automate the management of case timelines, such as by providing status updates, ascertaining whether the judges' directions had been complied with in a timely manner, and sending reminders when the material was not filed on time. In the experience of some judges, such systems could have the benefit of reducing a significant burden for courts and their staff. However, there was a debate on the potential benefit and harm of such "automated judgment systems" for the future. Issues such as blurring of the line between the roles of the computer and of the judge, decreased relevance of the judge, lack of objectivity and in-built biases in the algorithms, were raised. The panel noted that the discussion of the biases in automated systems provided an opportunity to also reflect on the existence of both conscious and unconscious bias in humans and judges themselves.

Turning to other methods of patent case management, some panelists underscored the need for early and regular interaction between the judge and the parties to help control case management in patent cases, which tended to be complex and expensive. Such active involvement of the judge in managing the case was found to also be essential in promoting settlement. One panelist saw facilitation of party settlement as a significant role in judicial case management. At the same time, it was emphasized that not all settlement conversations are the same, and different countries approach judicial mediation differently. Parties might wish for evaluative mediation, with a neutral evaluating the case, or a facilitative mediation, addressing the arguments in human relations. In some countries, judges were permitted to engage in settlement negotiations, whereas in other countries, mediation was done by a neutral outside the court.

Finally, the benefit of cost shifting was addressed as a way to address frivolous and vexatious litigations, and was noted as a growing trend in some jurisdictions.

Reference:

- Supreme Court of India [2021]: *Uflex Ltd v. Govt of Tamil Nadu & Ors* 2021 SCC OnLine SC 738

Closing

The *2021 WIPO IP Judges Forum* was closed by Justice Annabelle Bennett, Chair of the WIPO Advisory Board of Judges, and Mr. Marco Alemán, Assistant Director General of the IP and Innovation Ecosystems Sector at WIPO.

In her closing remarks, Justice Bennett observed that issues in IP, and particularly in patents, are not standing still. She reiterated that there are similarities and differences across different jurisdictions, and that the Forum discussions were intended to provide the opportunity for judges to speak freely, and to foster a community of peers who could serve as resources for their judicial peers.

Justice Bennett recalled that the discussions had highlighted that patent law does not exist in isolation, but deals with innovators and their inventions which are forward-looking. The role of judges in applying existing legal principles to these inventions can be complex, and the discussions over the preceding days had covered a wide range of topics, from abuse of rights, external public policy factors, the entwining of rights, proportionality, defenses including the Fair, Reasonable and Non-Discriminatory (FRAND) defense, compulsory licenses, seizure of counterfeit goods, the doctrine of equivalents, second medical use, post-publication data, what is sufficient to provide an enabling disclosure, and what is the appropriate extent of judicial intervention in the management of cases, including the taking of evidence. Case management had thus been discussed in all of its forms. She hoped that the Forum had assisted judges in being aware of the development of issues and approaches around the world, and in knowing what questions to ask.

Justice Bennett observed the continuing interactions that had arisen from the annual editions of the Forum. She looked forward to the 2022 edition of the Forum, and encouraged all the participants to join again next year.

Speaking on behalf of WIPO, Mr. Alemán thanked all the participating judges. He expressed WIPO's delight at the great response to this year's program on patents and case management, noting that a record number of 360 judges participated this year.

Mr. Alemán noted that this was an impressive level of interest on the topic of patents, which is a narrow and technical field, and is currently litigated in a limited number of countries. In light of these realities, Mr. Alemán considered that the interest shown during the Forum was significant in a number of ways. First, it illustrated the importance of making IP accessible and relevant for a broader group of stakeholders in the IP ecosystem, which is an important part of WIPO's vision. Second, it demonstrated that IP rights, despite being inherently territorial, are increasingly moving in global ways. And third, that the case management methods that have been shared will find analogies in other areas of IP, and in civil procedure generally.

Mr. Alemán recalled the discussions on the strong commonalities in the issues that come up in different jurisdictions – for example, the challenges of dealing with complex and technical subject matter – alongside learnings about the very different judicial structures and approaches to these problems. Mr. Alemán therefore believed that the Forum achieved its purpose to inform and be informed. The discussions also provided added impetus and inspiration for the WIPO International Patent Case Management Judicial Guide whose production in collaboration with the Berkeley Judicial Institute was underway.

Mr. Alemán thanked the expert moderators and speakers who drove these discussions for sharing their knowledge and experiences, as well as all the participants, for responding with their own views, experiences and questions, and expanding the conversations to reach the different corners of the world.

Mr. Alemán emphasized WIPO's view that this international judicial community is built by the continued engagement of judges who take time out of their demanding schedules to share their valuable contributions, and expressed the hope that the participating judges would continue to engage with the international IP judicial community that is the heart of the Forum and WIPO's work with judiciaries.



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