

Marketa Trimble

# Cross-Border IP Infringement **Patents**

CASRIP 20<sup>th</sup> Anniversary / IP LLM 10<sup>th</sup> Anniversary  
IP-across Topic Scholarship Conference  
July 28, 2012

- ◎ Cross-border patent infringement
- ◎ Online context
  - Selling, offering to sell, using, importing
  - Direct and indirect infringement
  - Unclear jurisdictional bounds

- Litecubes, LLC v. Northern Light Products, Inc.,  
523 F.3d 1353, 1366 (Fed. Cir. 2008)
- Blackboard, Inc. v. Desire2Learn, Inc.,  
574 F.3d 1371 (Fed. Cir. 2009)

- ⊙ Lack of concentration of proceedings
  - Justiciability
  - The Act of State doctrine / sovereignty
  - Technical complexity
  - Inconsistent results
    - Gesellschaft für Antriebstechnik mbH & Co. KG v Lamellen und Kupplungsbau Beteiligungs KG, ECJ, C-4/03, 13 July 2006
    - Jan K. Voda, M.D. v. Cordis Corporation, 476 F.3d 887 (Fed. Cir. 2007)
    - Lucasfilm Ltd. v. Ainsworth, [2011] UKSC 39, [2011] 3 WLR 487 (U.K. Supreme Court, 2011)

## ⊙ Bifurcation of proceedings

- Bifurcated versus non-bifurcated systems
- Protraction of proceedings
- Inconsistent results

- Solvay SA v Honeywell Fluorine Products Europe BV and Others, C-616/10, 12 July 2012

- ◎ Territorial limits on the Internet
  - Localization of the acts
  - Limitations of enforcement outside the protecting country
    - Enforcement of injunctions
    - Design-arounds
  - Geolocation
    - Evasion of geolocation

## ◎ Solutions

- Unified patent system
  - Centralization of proceedings
  - Procedural harmonization
  - Substantive harmonization – de facto / de jure
- Mutual cooperation in enforcement on the Internet

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