Revisiting Territoriality in Intellectual Property Law: Ten Years Later

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1. INTRODUCTION

In 2016, I defended my dissertation on *Territoriality in Intellectual Property Law*.[1] This was before the Unified Patent Court began operating with pan-European jurisdiction and national courts determined global FRAND rates, and before non-fungible tokens (NFTs), virtual worlds and generative AI had entered our daily lives. International trade in intellectual property-related goods and services was however in full swing, and courts were grappling with the application of the territoriality principle of intellectual property (IP) law and how it affected their jurisdiction.

A basic premise of the territoriality principle is that each State determines whether and the extent to which IP rights exist and are protected within its own territorial borders. Although the territoriality principle as such was well-established, the digital revolution was changing the way IP-related goods and services were sold, thereby challenging the premise that for an act to be infringing, it must take place on the territory of the protecting State.

The territoriality principle is a rule of substantive law, yet its implications for private international law have long been a source of confusion. Did the principle mean that States had to exercise jurisdiction and apply domestic law to infringements of national rights but were prohibited from exercising jurisdiction over infringements of foreign rights?

My dissertation problematized the principle of territoriality of IP law, by investigating its legal basis, application, and impact on the exercise of jurisdiction in the European Union (EU) and the United States (US). In this article, I revisit the key findings of the dissertation and reflect on their contribution and continued relevance today.

2. SUMMARY OF KEY FINDINGS

In brief, the core research questions were: which connecting factors—acts in the forum, effects in the forum (and their required intensity), or both—governed international civil jurisdiction, the choice of applicable law, and the territorial scope of substantive IP law for each of the studied legal systems, and what were the reasons for any similarities and differences.

The dissertation began by tracing the development of the principle of territoriality in international law, private international law and international intellectual property law.[2] It found that the international IP conventions[3] have reinforced the territoriality principle of international law and introduced the principle of national treatment.[4] These two principles function in concert, leading to a bundle of separate, independent rights, with each right limited to the protecting State's territory. The IP conventions do not however exhaustively define what those rights are, nor do they localize where the restricted acts occur.[5] This makes it possible for contracting States to flexibly pinpoint the act of infringement to achieve economic, social and cultural policy goals.

The dissertation demonstrated that the territoriality principle underlying in the IP conventions did not lay down any specific rules of private international law, but suggested a territorial approach.[6] The dissertation also found that the territoriality principle does not obligate States to exercise jurisdiction over infringements of national rights or prohibit them from exercising jurisdiction over infringements of foreign rights.[7] That said, public international law prohibits one State from invalidating or amending with *erga omnes* effect a right granted by another State within its territory.[8] All this means that

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1 Lydia Lundstedt, *Territoriality in Intellectual Property Law: A comparative study of the interpretation and operation of the territoriality principle in the resolution of transborder intellectual property infringement disputes with respect to international civil jurisdiction, applicable law and the territorial scope of application of substantive intellectual property law in the European Union and United States* (Stockholm University 2016) (Lundstedt 2016).

2 Lundstedt 2016 27–123.

3 Paris Convention for the Protection of Industrial Property, 20 March 1883; Berne Convention for the Protection of Literary and Artistic Works, 9 September 1886; Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Annex 1C to the Marrakesh Agreement Establishing the World Trade Organization (WTO), concluded on 15 April 1994.

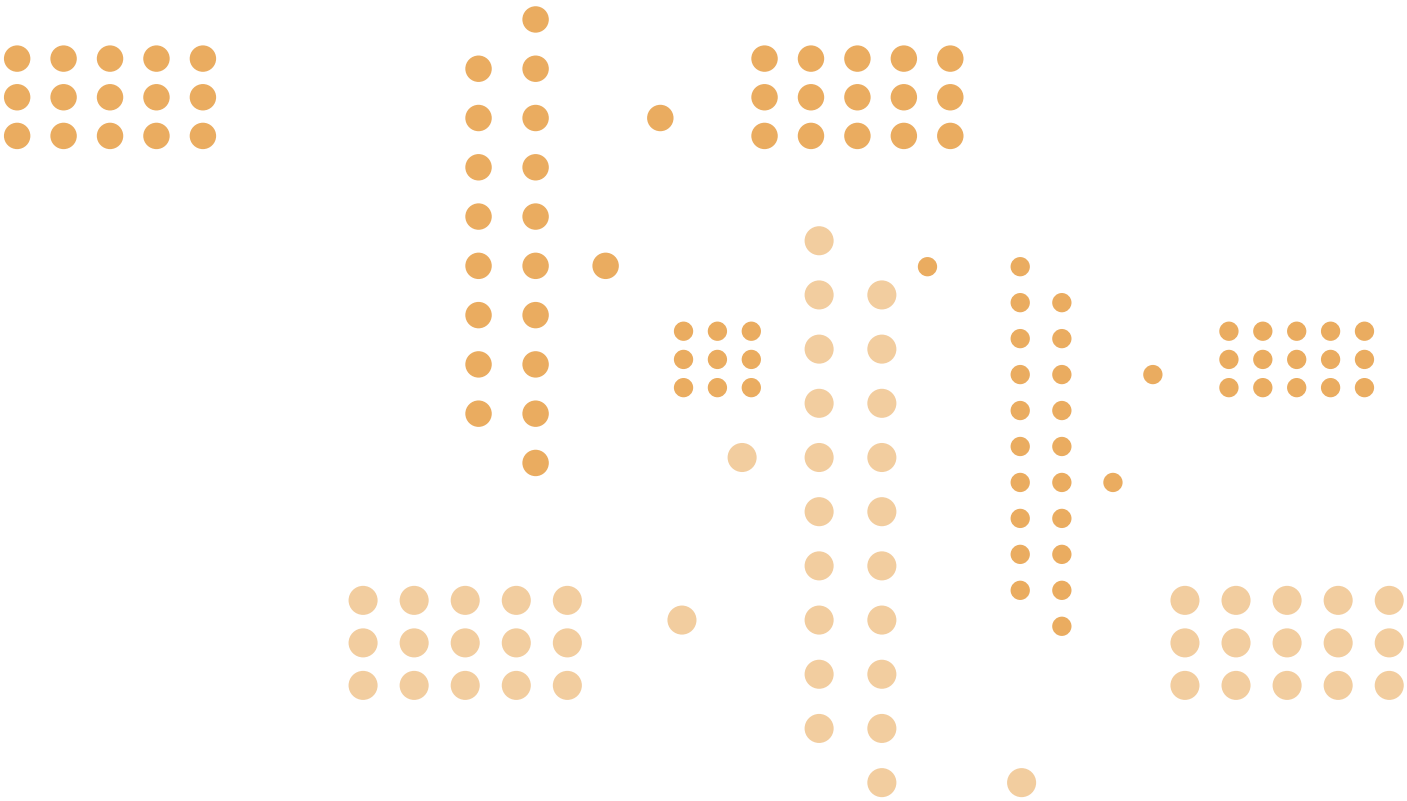
4 Ibid. 91–99.

5 Ibid. 99–104.

6 Ibid. 104–118.

7 Ibid. 105–109.

8 Ibid. 106.



the international IP framework leaves States with broad discretion when formulating and applying their rules on private international law and substantive IP law.

Regarding the two compared legal systems, the dissertation found that in both the EU and the US the rules on international civil jurisdiction, choice of law and the territorial scope of substantive IP law operated in tandem to produce similar results, but that the principle of territoriality operated more cogently at different levels in the EU and the US.[9] The dissertation showed that these differences could be explained by the different legal traditions and different perceptions on the function of private international law and IP rights in the EU and the US.[10]

The dissertation concluded by recommending that States strive after an international consensus with respect to defining and localizing the various infringing acts. It also observed that States primarily have an interest in regulating conduct that has IP impairing effects within their own territories, regardless of where the conduct takes place.[11] In addition, the dissertation argued in favour of a liberal approach to the territoriality principle's impact on private international law.[12]

3. SIGNIFICANCE AND CONTRIBUTION OF THE WORK AT THE TIME OF COMPLETION

At the time of completion, the dissertation was one of few in-depth investigations into the territoriality principle in international IP law. The dissertation contributed to the field by uncovering a legal basis for the territoriality principle of IP law but also demonstrated the principle's flexibility. At the time, my aim was to challenge the view that harmonized rules on private international law alone would solve conflict of laws problems for cross-border IP infringements arising from the same set of facts, without considering the territorial scope of the applicable substantive law. The dissertation intervened in this debate by providing a detailed and systematic comparison of approaches taken in the EU and the US. It showed that the substantive IP law in both jurisdictions regulated inbound and outbound IP-related goods and services, while applying the same or similar choice of law rules. In practice, although choice of law rules direct a court to the proper legal system, the territorial scope of substance IP law does all of the actual doctrinal work.

The dissertation also intervened in the debate about the consequences of the territoriality principle of private international law by demonstrating the discretion left to the States at the international level and the difference in approaches adopted by the EU and the US. At the time, this debate was critical because the Hague Conference on Private International Law had recently revived the work on the Judgments Project and initially included IP-related

9 Ibid. 541–544.

10 Ibid. 544–545.

11 Ibid. 548–549.

12 Ibid. 547–548.

judgments within its scope.[13] This was a positive first step. Under the 2016 draft, contracting states would be obligated to recognize and enforce IP judgments rendered in other contracting states—even concerning foreign IP rights—if the rendering court's jurisdiction was based on an acceptable ground. One such ground would be if the person against whom recognition or enforcement is sought was habitually resident there at the time that the proceedings were initiated.[14] Judgments that ruled on registration or validity of patents and other registered rights were, however, excluded from this obligation, unless the judgment was rendered in the country of registration.[15]

My dissertation supported this work by adding to the growing academic criticisms of interpreting the territoriality principle in a strict way to claim exclusive jurisdiction over domestic IP rights and refuse jurisdiction over foreign IP rights.[16] The Hague proposal was, however, too bold for the international community. The regulation of IP judgments at the international level remains a controversial and difficult question. The Judgments Convention was ultimately adopted, but IP judgments were excluded from its scope.[17]

The dissertation also engaged with the debate on the territoriality principle's impact on choice of law. It rejected a strict interpretation of the territoriality principle to lay down a mandatory application of the *lex loci protectionis* rule. This was timely because work at the International Law Association (ILA) was ongoing to develop guidelines on IP and private international law.[18] An important issue was the possibility of departing from the *lex loci protectionis* rule in cases of ubiquitous infringement and to allow for party autonomy. The global reach of offers for IP-related goods and services exposed sellers to potentially as many applicable laws as there were countries in which the content was accessible. The ILA's guidelines ultimately adopted a single law approach for ubiquitous infringements and allowed party autonomy with respect to the law applicable to infringement remedies. However, they did not adopt the dissertation's recommendation that commercial parties should be permitted to choose the applicable law, provided that the interests of third parties were not negatively affected.[19]

Lastly, the dissertation made a methodological contribution in the field of comparative law.[20] The dissertation was an example of what Strömholm called a *härskande* or dominant approach to comparative research where the comparison itself is the main objective element, and is made from outside and independent of the compared legal systems.[21] The dissertation applied a functional approach to compare the EU and the US legal systems and explain the reasons why the systems operate as they do in the regulation of transborder IP disputes.[22]

4. CONTINUING RELEVANCE OF THE FINDINGS

Despite the ten years that have passed since the dissertation was published, the topic itself and underlying findings remain highly relevant today. Indeed, legislators, courts and policymakers continue to address challenges regarding the application of the principle of territoriality and the definition and localization of the infringing acts.

A much-debated question today is how to deal with Generative AI models that are trained on copyright protected works in one State, where this is lawful, but used in other States, where this is unlawful, to compete with the very works that the AI models have trained upon.

13 See Hague Conference on Private International Law, 2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Working Document No 76 E revised, 2016), https://assets.hcch.net/docs/42a96b27-11fa-49f9-8e48-a82245aff1a6.pdf (visited 12 February 2026). See also the World International Property Organization (WIPO)'s comments on the text, World Intellectual Property Organization, Comments Submitted by the WIPO Secretariat on the 2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments (Work. Doc. No 77, 6 September 2016), https://assets.hcch.net/docs/cea6387f–05f4-4233-8fdc-b72aa0ef09bf.pdf (visited 12 February 2026).

14 Article 5(1) ibid.

15 Article 6 ibid.

16 See American Law Institute, Intellectual Property: Principles Governing Jurisdiction, Choice of Law and Judgments in Transnational Disputes (ALI Publishers 2008); European Max Planck Group on Conflict of Laws in Intellectual Property, Conflict of Laws in Intellectual Property: The CLIP Principles and Commentary (London: Oxford University Press 2013); Transparency of Japanese Law Project, 'Transparency Proposal on Jurisdiction, Choice of Law, Recognition and Enforcement of Foreign Judgments in Intellectual Property', available in J. Basedow, T. Kono & A. Metzger (eds), Intellectual Property in the Global Arena – Jurisdiction, Applicable Law, and the Recognition of Judgments in Europe, Japan and the US, 394–402 (Mohr Siebeck 2010); Private International Law Association of Japan and Korea, Joint Proposal on 'Principles of Private International Law on Intellectual Property Rights', available in The Quarterly Review of Corporation Law and Society 112–163 (2011).

17 Article 2(m) Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (concluded 2 July 2019, entered into force 1 September 2023). See also Lydia Lundstedt, 'The Newly Adopted Hague Judgments Convention: A Missed Opportunity for Intellectual Property' (2019) 50 IIC – International Review of Intellectual Property and Competition Law 933. Judgments concerning IP contracts are within the Convention's scope, provided the judgment is mainly based on contract law and not on IP law. Francisco Garcimartín and Geneviève Saumier, Explanatory Report: Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (HCCH 2020), para 65.

18 See The International Law Association's Committee on Intellectual Property and Private International Law operated from 2010 to 2020, addressing jurisdiction, applicable law, and recognition of judgments in cross-border IP disputes, https://www.ila-hq.org/en_GB/committees/intellectual-property-and-private-international-law (accessed 26 November 2025).

19 See International Law Association, 'Kyoto Guidelines on Intellectual Property and Private International Law' (2021) Journal of Intellectual Property, Information Technology, and Electronic Commerce Law 1.

20 In his review, Professor Marcus Norrgård wrote: 'Lundstedt's dissertation is a successful attempt at using comparative law. The strength is not only in the theoretical description of how comparative law should be done, but especially in the way she actually does comparative law... The dissertation is, apart from being a work on the territoriality principle, also an example of 'comparative law in action'. Lundstedt has a very good command of the comparative law method, and she employs it rigorously.' Marcus Norrgård, 'Recension: Lydia Lundstedt, Territoriality in Intellectual Property Law (Stockholm University 2016) (2017) Juridisk tidskrift 761, 764, 769.

21 Stig Strömholm, 'Har den komparativa rätten en metod?' (1972) SvJT 456, 462.

22 Lundstedt 2016 12–18.

Article 53(1)(c) of the EU AI Act requires providers of general-purpose AI models to comply with EU law, even if their models are trained abroad, when those models are placed on the EU market.[23] Commentators disagree about whether this is an extraterritorial application of EU law.[24] The answer depends on how one defines an infringing act. It is clearly an extraterritorial application of EU law if one focuses on the reproduction of the works abroad, but the answer is different if one focuses on the placing of the model on the market in the EU.[25]

Despite the developments to date, IP laws continue to lack clear guidance on what constitutes an infringing act and which policy objectives are at stake, especially in digital environments. In 2023, a divided majority of the US Supreme Court held that the territoriality principle in trademark law limits the US trademark act's[26] reach to uses in commerce in the US.[27] These justices relied on the presumption against extraterritoriality which holds that Congress's laws apply only within US borders unless otherwise indicated.[28] Four concurring justices, while agreeing with the result in the case at hand, maintained that applying the trademark act to conduct occurring abroad is fully compatible with the territoriality principle where that foreign conduct is likely to cause consumer confusion in the US.[29] The gap between the majority and concurring opinions stems from their different approaches: the majority focused on the conduct to localize the infringing act, while the concurrence focused on the effects in the country of protection.

Likewise, in Japan, the Intellectual Property High Court confirmed that the territoriality principle limits the Japanese Patent Act to acts of infringement occurring within Japan.[30] However, it disagreed with the lower courts on where the allegedly infringing acts took place. The IP High Court held that even if some components of the accused activity were performed abroad, infringement might still occur 'in Japan' where, viewed as a whole, the acts can be substantively assessed as having taken place in Japan. In making this determination, the court considered multiple factors, including where the effects of the patented invention are realized, and may find domestic infringement even when parts of the system or conduct are located overseas.

The unauthorized minting of IP-protected works, the sale of NFTs, and the licensing of the underlying digital assets all introduce new IP-related phenomena that raise complex private international law questions. Unlike traditional internet-based forms of digital communication, NFTs and blockchain technologies decentralize not only the effects of online activities but also the conduct and storage of the underlying digital files, distributing them across a network rather than locating them in any single place. A report from the European Parliament stresses that traditional territorial principles on jurisdiction and applicable law might prove inadequate to virtual worlds, that rely on decentralized technologies such as blockchain.[31] These examples underscore that the dissertation's insight remains pertinent: the territoriality principle's inherent flexibility to adapt to new environments by pinpointing the infringement where the IP-impairing effects materialize.

Questions also continue to persist about the effect of the territoriality principle of private international law. Does this principle imply that States should exercise jurisdiction when domestic rights are alleged to be infringed without requiring any other connection to the domestic territory? As the dissertation found, this is the situation under EU private international law where the Court of Justice of the European Union (CJEU) applies an accessibility approach to jurisdiction under Article 7(2) of the Brussels I Regulation.[32]

Two of my subsequent works building on my dissertation have been cited in a 2021 study on cross-border enforcement of IP rights commissioned by the European Parliament's Committee on Legal Affairs.[33] This study

23 See Article 53(1)(c) and recital 106 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

24 See Eleonora Rosati, 'Infringing AI: Liability for AI-Generated Outputs under International, EU, and UK Copyright Law' (2025) European Journal of Risk Regulation 603, 613–615; Malte Stieper and Michael Denga, 'The international reach of EU copyright through the AI Act' (2024) Beiträge zum Transnationalen Wirtschaftsrecht, No. 194, 13–15; Mattias Rättzén, 'Location Is All You Need: Copyright Extraterritoriality and Where to Train Your AI' (2024) 26 The Columbia Science and Technology Law Review 175, 241–247; João Pedro Quintais, 'Generative AI, copyright and the AI Act' (2025) 56 (106107) Computer Law & Security Review heading 4.4; Alexander Peukert, 'Copyright in the Artificial Intelligence Act – A Primer' (2024) 73(6) GRUR International 497, 505–506.

25 Even before the AI act, the act of importing into the country of protection of copies of works made abroad was an infringing act. However, a difficulty in applying these provisions is that it is not clear whether the model itself contains copies of the works it trained upon. See Getty Images (US), Inc v Stability AI Ltd, [2025] EWHC 2863 (Ch) para 600–602 (finding that the AI model itself did not contain any copies of the works so its importation into the UK was not an infringing act) and Munich District Court I (LG München I), 42 O 14139/24 (11 November 2025) 33–40 (finding that the models themselves were copies of the works). See also a recent report by the European Parliament which called for a 'reassessment of the territoriality principle': 'We cannot allow AI models to be trained just anywhere in the world using European copyright-protected data only for them to be then made available in Europe.' European Parliament, Copyright and generative artificial intelligence – opportunities and challenges (Draft Report, Committee on Legal Affairs, 2025/2058(INI), 27 June 2025) 14, 9.

26 Lanham Act 1946 (Trademark Act of 1946), 15 USC §§ 1051 et seq. (US).

27 Abitron Austria GmbH v. Hetronic International, Inc., 600 U.S. 412 (2023), opinion of the Court.

28 Ibid.

29 Ibid. Sotomayor J, concurring in judgment.

30 Masabumi Suzuki, 'Patent Infringement by Cross-border Acts: Introduction and Analysis of Recent Case Law in Japan' (2024) 53(2) Patents & Licensing 24.

31 European Parliament, 'Policy implications of the development of virtual worlds – civil, company, commercial and intellectual property law issues' (European Parliament resolution of 17 January 2024) P9_TA(2024)0029.

32 Lundstedt 2016 192–212. See also Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

33 European Parliament, Cross-Border Enforcement of Intellectual Property Rights in the EU (Policy Department for Citizens' Rights and Constitutional Affairs, Study 703387, 2021) 27, 53–54 (citing Lydia Lundstedt, 'Jurisdiction and choice of law in online copyright cases' in E.

feeds into the Parliament's broader reflections on how to adapt EU private international law to online IP infringements. The study noted my critique that the CJEU's accessibility approach to jurisdiction was inconsistent with the Brussels I Regulation objectives of foreseeability and proximity, while at the same time noting my observation that frivolous lawsuits will not likely be successful under applicable law. The proper balance between access to justice for right holders and protecting defendants from unforeseeable and sometimes frivolous lawsuits in foreign States has gained new relevance in today's highly polarized world where IP litigation can be used in an attempt to silence criticism and dissenting views.[34]

More generally, the dissertation has become part of the standard literature on the territoriality principle of IP in the fields of both intellectual property law and private international law.[35] It has also been referenced as an example of comparative research in the field of IP law.[36] The dissertation is freely available on the Swedish Digital Academic Archive database (DIVA), and to date, there have been 19,231 downloads and 25,633 page visits, making it the platform's 18th most visited doctoral thesis of all time.[37]

5. THE EVOLUTION OF THE TERRITORIALITY PRINCIPLE

Since the publication of my dissertation ten years ago, the territoriality principle and its implications on private international law is continuing to evolve. There have been a number of significant developments that confirm and refine the interpretation of the principle and its effect on private international law.

In July 2025, for instance, a WTO arbitral panel clarified that the territoriality principle not only means each State defines and enforces IP rights inside its borders but also obligates States to refrain from frustrating the enforcement of IP rights in other States' territories.[38] The EU had brought this case in response to China's policy of issuing anti-suit injunctions (ASIs) against SEP holders to prevent them from enforcing their rights in the State of protection while proceedings were ongoing in China

Rosati (ed.), The Routledge Handbook of EU Copyright Law (Routledge 2021) 396; Lydia Lundstedt, 'AMS Neve and Others (C-172/18): Looking for a Greater 'Degree of Consistency' Between the Special Jurisdiction Rule for EU Trade Marks and National Trade Marks', (2020) 69(4) GRUR Int 355.)

34 CASE Handbook: How to prevent SLAPPs or get help if it's too late (Coalition Against SLAPPs in Europe (CASE) 2024); See Cathay Y N Smith, 'Copyright Silencing' (2021) 106 Cornell Law Review Online 71. See also Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings.

35 See e.g., Marta P. Sender, 'International Property Law and Territoriality' in Morten M Fogt, *Private International Law In An Era Of Change* (Edward Elgar 2024) (citing Lundstedt's dissertation to explain the territorial nature of IP and its limits); Mattias Rattzén, 'Location Is All You Need: Copyright Extraterritoriality and Where to Train Your AI' (2024) 26 The Columbia Science and Technology Law Review 175, 261 fn 431 (citing the dissertation for summarizing the territoriality limitations of intellectual property rights); Stefan Koos, 'Digital Globalization and Law' (2022) 6(1) Lex Scientia Law Review 33, 45(citing the dissertation for the premise that ' the scope of national intellectual property rights is historically linked to the reach of state sovereignty and thus limited to the national territory.'); Christian Heinze, 'Transition and Continuity in the Private International Law of Intellectual Property' 134 fn 4 in Niklas Bruun, Graeme B. Dinwoodie, Marianne Levin, Ansgar Ohly (eds), *Transition and Coherence in Intellectual Property Law: Essays in Honour of Annette Kur* (Cambridge University Press 2020) (citing the dissertation for providing an extensive analysis on the territoriality principle); Annette Kur & Ulf Maunsbach, 'Choice of Law and Intellectual Property Rights (2019) 6(1) Oslo Law Review 43 ('An insightful discussion as regards early bilateral conventions in the fields of private international law, and an acknowledgment as regards the importance of the Paris and Berne Conventions, may be found in Lydia Lundstedt, Territoriality in Intellectual Property Law'); Emmanuel K. Oke, 'Territoriality in Intellectual Property Law: Examining the Tension between Securing Societal Goals and Treating Intellectual Property as an Investment Asset' (2018) 15(2) SCRIPTed 313 (citing Lundstedt's dissertation several times for the historical and conceptual account of territoriality); See Elena Leanovich, 'Intellectual Property Rights on the Internet: Private International Law Questions in Belarus' in WIPO–WTO Colloquium Papers 2018 (Chapter 2) 19 ('Lydia Lundstedt conducted a detailed and comprehensive study of the various approaches to territoriality of intellectual property in EU Member States and the United States.').

36 See Päivi Hutukk, 'Copyright Law in the European Union, the United States and China' (2023) 54 IIC – International Review of Intellectual Property and Competition Law 1044, 1046.

37 Lydia Lundstedt, Territoriality in Intellectual Property Law: A comparative study of the interpretation and operation of the territoriality principle in the resolution of transborder intellectual property infringement disputes with respect to international civil jurisdiction, applicable law and the territorial scope of application of substantive intellectual property law in the European Union and United States (Stockholm University 2016) https://su.diva-portal.org/smash/record.jsf?dswid=-4392&pid=diva2%3A972658 (accessed 22 November 2025). Stockholm University Library, 'DiVA Statistics – Publication' https://su.diva-portal.org/smash/statistics.jsf?dswid=310&faces-redirect=true&statisticType=publication&language=en (accessed 22 November 2025).

38 WT/DS611/ARB25 – China – Enforcement of Intellectual Property Rights (21 July 2025) 4.70–4.75.

to set global FRAND rates.[39] The arbitral panel found that the territoriality principle includes a negative obligation alongside the classic positive right. In other words, territoriality is bidirectional: every Member regulates patents inside its borders but must not interfere with how other Members regulate patents inside theirs.

In February 2025, the EU made its own major clarification of the implication of the territoriality principle on international civil jurisdiction. The CJEU held that international law does not prevent a State from exercising jurisdiction over alleged infringements of foreign patents when the defendant is domiciled within its territory, nor from examining the validity of those foreign patents when validity is raised as a defence.[40] However, the Court also made clear that the principle of non-interference prohibits a court from taking any action that would affect the existence or substantive content of a foreign patent, or from ordering changes to that patent's registration in the foreign State's national register.[41] This ruling, when applied by the EU Member State courts as well as the nascent Unified Patent Court is a real game-changer in cross-border patent litigation.[42]

Both the rise of global FRAND determinations and the CJEU's decision in BSH reflect a judicial preference for procedural efficiency and coherent dispute resolution across borders, even at the cost of diluting traditional notions of territorial sovereignty over IP rights. By contrast, the recent US clarification on trademarks and territoriality points in the opposite direction, signalling a continued insistence on keeping IP questions firmly within domestic control.

6. CONCLUSION: LOOKING BACK, LOOKING FORWARD

Looking back over the past ten years, my dissertation has contributed to the fields of IP law and private international law with an in-depth study of the territoriality principle of IP law. The dissertation has demonstrated the flexibility of the territoriality principle enabling the EU and the US to regulate both inbound and outbound IP-related goods and services. The dissertation also has showed that while the principle has an impact on international civil jurisdiction and applicable law, it does not lay down specific rules and leaves discretion to States to formulate their rules to suit their legal traditions on the function of private international law and IP rights in their legal systems. The dissertation has also become an example of how a comparative method can be fruitfully applied to describe and explain the similarities and differences between two vastly different legal systems.

The territoriality principle continues to evolve as States reinterpret it to advance a range of policy objectives—whether preserving sovereignty over domestic IP rights, ensuring procedural efficiency and legal certainty, or strengthening the protection of their rights holders in foreign markets. Looking forward, however, a unilateral pursuit of national (and regional) policy objectives is not sustainable. Instead, States should strive to achieve an international consensus with respect to which connecting factors—acts in the forum, effects in the forum (and their required intensity), or both—should govern international civil jurisdiction, the choice of applicable law, and the territorial scope of substantive IP law.

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39 See Enrico Bonadio and Nicola Lucchi, 'Antisuit injunctions in SEP disputes and the recent EU's WTO/TRIPS case against China' (2023) 26(3) The Journal of World Intellectual Property 477. China's policy was in response to Western courts exercising jurisdiction over global FRAND disputes. See e.g., Unwired Planet International Ltd v Huawei Technologies Co Ltd; Huawei Technologies Co Ltd v Conversant Wireless Licensing SÀRL [2020] UKSC 37.

40 Judgment of 25 February 2025, BSH Hausgeräte (C-339/22, Publié au Recueil numérique) ECLI:EU:C:2025:108, para 70–77.

41 Ibid.

42 Lydia Lundstedt, 'BSH Hausgeräte: A Game-Changer in Cross-border Patent Litigation, 5 March 2025, EAPIL blog, https://eapil.org/2025/03/05/bsh-hausgerate-a-game-changer-in-cross-border-patent-litigation.