

## Background

The granting of an injunction is a remedy that is available to patent holders to enforce their rights. In many EU Member States, injunctions are conceived as default remedies. However, granting an injunction irrespective of the particular facts of the case can lead to hardship for stakeholders and the public. “One size fits all solutions” such as automatic injunctions are not necessarily fair and equitable.

First and foremost, the EU’s Intellectual Property Rights Enforcement Directive requires that remedies granted must be “fair and equitable” and be “effective, proportionate and dissuasive”. Scholars more and more accept that especially in patent cases, an injunction should not necessarily be granted in every case. Even the German Federal Court considered that under certain circumstances an injunction (temporarily) is not available (BGH, 10.5.2016 – X ZR 114/13 – Wärmetauscher). And the US Supreme Court’s decision *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006), demonstrates that the competing interests can also be balanced via the means of remedies.

Against this backdrop many questions arise: e.g., How can patents be enforced instead so that the remedy granted is equitable and takes into account the range of different interests? Which factors need to be considered in deciding which remedy to grant? Is it possible to identify certain kind of cases where granting an injunction is inappropriate? Does a patent proprietor have to be compensated and, if so, how?

During the international symposium, these questions will be analysed from an international, European and national perspective.

## Organizer

Institute of Law and Technology  
Chair of Private Law, Intellectual Property  
and Technology Law  
Prof. Dr. Franz Hofmann, LL.M. (Cambridge)

## Contact

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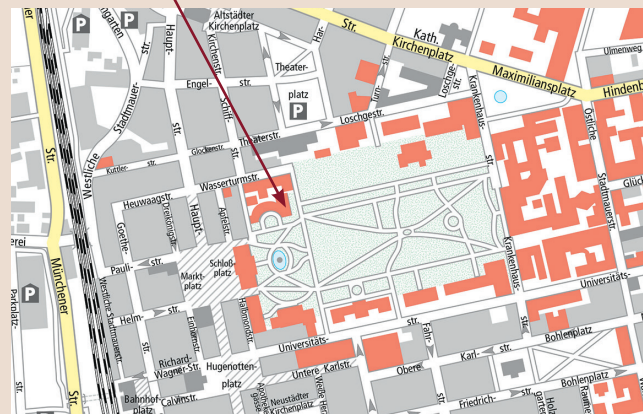
## Registration

via [getr@fau.de](mailto:getr@fau.de)  
by 4.3.2019

## Venue

Wassersaal, Orangerie  
Schlossgarten 1, 91054 Erlangen

Location of Orangerie



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# Enforcing Patents Smoothly: From Automatic Injunctions to Proportionate Remedies

22.3.2019



# Programme

Friday, 22 March 2019



9.00 a.m. Registration and Coffee

9.30 a.m. **Welcome and Introduction**

Balancing interests via remedies  
(Prof. Dr. Franz Hofmann, LL.M.,  
Friedrich-Alexander-Universität  
Erlangen-Nürnberg)

## Injunctions in Patent Law – The Fundamentals

10.00 a.m. **Injunctions in European Patent Law**

(Prof. Dr. Lea Tochtermann,  
Universität Mannheim)

10.45 a.m. **Discussion**

11.00 a.m. **Economics of Injunctions in Patent Law**

(Prof. Thomas F. Cotter,  
University of Minnesota Law School)

11.30 a.m. **Discussion**

11.45 a.m. Coffee

## Case Studies: “Tailored” Injunctions

12.15 p.m. **The “grace period” in German Unfair Competition Law, Copyright and Trade-mark Law**

(Prof. Dr. Jan Bernd Nordemann, LL.M.,  
Attorney at law, Berlin)

12.45 p.m. **The “grace period” in German Patent Law**

(Prof. Dr. Christian Osterrieth,  
Attorney at law, Düsseldorf)

1.15 p.m. **Discussion**

1.30 p.m. Lunch

2.30 p.m. **“FRAND-Injunctions” in Europe**

(Prof. Dr. Peter Picht, LL.M.,  
Universität Zürich)

3.00 p.m. **Discussion**

## Case Studies: Compensation in Lieu of Injunctions

3.15 p.m. **The English case law**

(Daniel Alexander QC,  
8 New Square London)

3.45 p.m. **The US case law after eBay v. MercExchange**

(Prof. Dr. John M. Golden,  
University of Texas at Austin)

4.15 p.m. **Discussion**

4.30 p.m. Coffee

## Conclusions and Key Take-Aways

5.00 p.m. **Identifying underlying legal principles**

(Dr. Martin Stierle, LL.M.,  
Ludwig-Maximilians-Universität München)

5.30 p.m. **Practical implications. The judge’s perspective**

(Dr. Peter Tochtermann,  
Presiding Judge, Mannheim Regional  
Court)

6.00 p.m. **Discussion**

6.15 p.m. **Panel Discussion  
The good, the bad, and the ugly –  
Injunctions in Patent Law and  
alternatives**

Patrick Schmitz, LL.M.,  
Senior Legal Counsel, Deutsche Telekom  
Dr. Clemens-August Heusch, LL.M.,  
Head of European Litigation, Nokia

Dr. Peter Tochtermann,  
Presiding Judge, Mannheim Regional Court  
(Chair: Dr. Ralf Uhrich, LL.M.,  
Patent Litigation Counsel, Google)

7.00 p.m. **Reception**