



2018 AIPPI World Congress - Cancún
Adopted Resolution
September 26, 2018

Resolution

HCCH Judgments project

Background:

- 1) This Resolution concerns an ongoing project of the Hague Conference on Private International Law (**HCCH**), namely the development of a convention on the recognition and enforcement of foreign judgments (**Convention**). This project is referred to as the **Judgments Project**. The latest draft of the Convention available at the time of adoption of this Resolution is 27 May 2018 (see [link](#)) (**Draft Convention**).
- 2) This Resolution seeks to establish whether, and if so to what extent, intellectual property should be included within, or excluded from, the scope of the Convention.
- 3) This Resolution does not address purely contractual disputes, whether related to an intellectual property right (e.g. a licence) or otherwise.
- 4) 22 Reports were received from AIPPI's National and Regional Groups and Independent Members providing detailed information and analysis regarding national and regional laws relating to this Resolution. These Reports were reviewed by the Enforcement Committee and the Reporter General Team of AIPPI and distilled into a Summary Report (see links below).
- 5) At the AIPPI World Congress in Cancun in September 2018, the subject matter of this Resolution was further discussed within a full Plenary Session, following which the present Resolution was adopted by the Executive Committee of AIPPI.

AIPPI resolves that:

- 1) Intellectual property should be excluded from the scope of the Convention.
- 2) Article 2 of the Draft Convention should be reworded as follows:
 - a) in line with the wording of Article 1(1) of the Draft Convention, the beginning of Article 2(1) of the Draft Convention should be reworded to: "*This Convention shall not apply to the recognition and enforcement of judgments relating to the following: (...)*";
 - b) Article 2(1)(m) of the Draft Convention should be reworded to: "*entitlement, ownership, validity or infringement (also including other monetary remedies to which the rightholder is entitled) of intellectual property as set out in Part I of Article 1(2) of TRIPS, namely:*
 - i) *copyright and related rights;*
 - ii) *trademarks;*
 - iii) *geographical indications;*
 - iv) *industrial designs;*
 - v) *patents;*
 - vi) *topographies of integrated circuits; and*
 - vii) *undisclosed information,*

as further described in Part II Section 1 to 7 inclusive of TRIPS, as well as any other registered and unregistered intellectual property rights";
 - c) the wording "*[and analogous matters]*" as included in Article 2(1)(m) of the Draft Convention should be deleted.
- 3) Notwithstanding paragraphs 1) and 2) above, if intellectual property is included within the scope of the Convention:
 - a) a judgment ruling on the validity of an intellectual property right should only be eligible for recognition and enforcement if given by a court of the contracting state in which protection is claimed;
 - b) a judgment ruling on the infringement of an intellectual property right should only be eligible for recognition and enforcement if given by a court of the contracting state in which protection is claimed and applying the law of that

state. It should not be eligible for recognition if the defendant to the infringement claim has not acted in that state and/or their activity cannot reasonably be seen as having been targeted at that state;

- c) a judgment ruling on an intellectual property right other than those listed under paragraph 3 a) and b) above, should be eligible for recognition and enforcement if given by a court of the contracting state in which protection is claimed;
- d) a judgment ruling on, or a decision relating to, an intellectual property right rendered by a body other than a court should not be recognized and enforced unless such judgment or decision is final, binding and subject to all rights of due process that would otherwise have been extended to the parties if before a court;
- e) the Convention should only cover the recognition and enforcement of monetary remedies in respect of intellectual property;
- f) recognition of a judgment ruling on the validity or infringement of an intellectual property right by a court of the contracting state in which protection is claimed, as set out under paragraphs 3a) and 3b) above, should not require the court of another contracting state to declare that intellectual property right protected in that other state valid, or to find infringement thereof.

Links:

- [Questionnaire](#)
- [Summary Report](#)
- [Reports of National and Regional Groups and Independent Members](#)