ARBITRABILITY OF INTELLECTUAL PROPERTY DISPUTES AND CHALLENGES DURING JUDICIAL REVIEW OF ARBITRAL AWARD

A thesis submitted to New Vision University Master of Comparative Private and International Law Program for the award of the Master of Laws ("LL.M.") Degree

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LIST OF ABBREVIATIONS

IP- Intellectual Property

WIPO- World Intellectual Property Organization

AAA - American Arbitration Association

CPR -Civil Procedure Rules

FCP - Federal Patent Court

GCCP -German Code of Civil Procedure

ECHR -European Convention of Human rights

EUIPO- European Union Intellectual Property Office

EUGIPP-The European Union Georgia Intellectual Property Project

EU-European Union

CJEU-Court of Justice of the European Union

TFEU-Treaty on the functioning of the European Union

ICC- International Court of Arbitration

ICSID-The international Centre for the Settlement of Investment Disputes

R&D- Research and Development

SME-Small and medium-sized enterprises

p./pp.-Page/Pages

No.-Number

Id.-Idem

Ibid.- Ibidem

&- And

UNCITRAL-United Nations Commission on International Trade Law

Introduction

In the modern world, the importance of intellectual property is increasing as its importance for economic prosperity, international trade and commercial profit. As the urgency of intellectual property grows, so do intellectual property disputes. It is interesting to understand how different legal systems view arbitration in intellectual property disputes.

Both national economies and individual owners or users place a high value on intellectual property. Economic progress is dependent on the most recent state-of-the-art scientific discoveries, which are normally protected by intellectual property rights that are registered or recorded.[1]

The purpose of this paper is to understand whether intellectual property disputes are subject to arbitration, what arguments against arbitrability of Intellectual property disputes may show up, and what review standard can be used by courts when the basis is arbitrability. I will mainly use comparative analysis method to understand how arbitrability of intellectual property dispute is viewed in different legal systems and what risks may arise during a judicial review of an arbitral award when the basis is arbitrability of Intellectual property disputes.

First chapter discusses about arbitration in intellectual property disputes, explains what international arbitration is and the benefits of dealing with intellectual property disputes in arbitration.

The second chapter deals with the arbitrability of intellectual property disputes, what counter-arguments there are in this regard, and whether there is any solution to disprove the counter-arguments about arbitrability.

The third chapter deals with the standards of review by the court and reveals what dilemma exists in this regard. The fourth chapter deals with the legal system of different countries regarding the arbitration of intellectual property.

[1] Final report on Intellectual Property Disputes and Arbitration, ICC International court of arbitration Bulletin vol.9/No.1. section 1.3

In the next chapter, I will discuss Georgia's approach to the arbitrability of intellectual property disputes and what challenges Georgia faces in this regard, this chapter will answer the question of which standard of review should be used by Georgian Courts during the phase of recognition and enforcement and reasons for this. Finally, I will discuss the role of WIPO in intellectual property disputes and its arbitration and mediation center.

Chapter 1. Arbitration in intellectual property disputes

Disputes over intellectual property rights have been heard primarily in national courts. Nonetheless, there has been a significant shift toward arbitration in recent years.

International arbitration is becoming a more popular way to settle intellectual property ("IP") disputes. This is not surprising given the growing importance of intellectual property in today's globalized and digitalized world for economic prosperity, international trade, and commercial profits.

Traditionally, National courts heard IP disputes. This is due to the historical association of intellectual property rights with public policy and the exclusive jurisdiction of state courts, which led to the widespread belief that IP disputes were not "arbitrable" and could only be resolved by national courts. However, most jurisdictions now recognize IP disputes as arbitrable, with certain exceptions and limitations, just like any other dispute in which the parties can freely dispose of their private rights.[2]

IP disputes are disagreements over intellectual property rights. It generally includes the following rights:

- Patents
- Trademarks
- Copyright
- Domain name

Article 2(viii) of the Convention Establishing the World Intellectual Property Organization of 14 July 1967 (as amended in 1979) defines "intellectual property rights" as rights pertaining to:

[2] T. Legler, "Arbitration of Intellectual property Disputes" 2/2019, p.291

– literary, artistic and scientific works,

- performances of performing artists, phonograms, and broadcasts,
- inventions in all fields of human endeavor;
- scientific discoveries,
- industrial designs,
- trademarks, service marks, and commercial names and designations,
- protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.[3]

In practice, most IP disputes stem from infringements, the validity and ownership of intellectual property rights, or a breach of contract.[4] Most jurisdictions consider infringement and breach of contract claims to be arbitrable. Only a few jurisdictions, such as South Africa, outright prohibit the arbitration of intellectual property disputes.[5]

1.1 What is International Arbitration?

International arbitration is comparable to domestic court litigation, except it takes place before private adjudicators known as arbitrators rather than a domestic court. It is a private, enforceable, consensual, neutral, binding, and enforceable method of resolving international disputes that is often faster than domestic court proceedings.

International arbitration is frequently referred to as a hybrid type of international dispute resolution because it combines elements of civil law and common law procedures while giving the parties a large amount of control over the arbitral procedure that will be used to resolve their issue. Any disagreement that is deemed "arbitrable" can be resolved through international arbitration.[6]

[3] Convention Establishing the World Intellectual Property Organization Signed at Stockholm on July 14, 1967 and as amended on September 28, 1979, pp.1

[4] T. Legler, “Arbitration of Intellectual property Disputes” 2/2019, p.291

[5] GAR, The Guide to Intellectual Property Arbitration, Law Business Research 2021, p. 26.

[6] “Alternative Dispute Resolution,” N. BROADBENT, Legal Information Management 2009, vol. 9, p. 195

When parties from different jurisdictions are involved in arbitration proceedings, they take on an international flavor (i.e., parties bound by a cross-borders agreement or contract, which is alleged to have been breached).[7]

The following are the distinguishing characteristics and most important features of arbitration:

- The arbitration procedure will take place only if the parties agree to it: such agreement can be reached prior to the dispute (i.e., the presence of an arbitration clause in the contract binding the parties) or after the dispute has arisen (i.e., through a submission agreement).
- The dispute is heard in front of an impartial neutral arbitral tribunal made up of up to three arbitrators (and not a tribunal from the same jurisdiction as one of the disputants, which could be biased).
- The final decision is made by one or three arbitrators who act as proper court judges.
- The parties have the option of selecting the arbitrators through mutual agreement.
- The parties have the right to choose the main elements of the resolution proceedings, which are the results of a common and shared decision: the venue, the language, and the applicable law.
- The arbitrators' decision is final, binding on the parties, and enforceable.[8]

There are two types of International Arbitration: Institutional Arbitration and Ad Hoc Arbitration. Both of them can be used to settle IP disputes.

Ad hoc arbitration occurs when parties organize and plan their own arbitration, including the selection of arbitrators, the designation of rules and applicable law, and the powers of the arbitrators. All aspects of the arbitration must be specified in the arbitration agreement.[9]

Institutional arbitration saves parties and their lawyers the time and effort of determining the arbitration procedure and drafting an arbitration clause that the institution provides. Once the parties have decided on an institution, they can incorporate the draft clause from that institution into their contract.[10] Some arbitral institutions have issued rules tailored specifically to intellectual property disputes are: WIPO rules, AAA rules and CPR rules.The definition of

[7] Ibid.

[8] "Alternative Dispute Resolution," N. BROADBENT, Legal Information Management 2009, vol. 9, p. 196

[9] https://libraryguides.jmls.edu/c.php?g=261791&p=1750896 last seen 05.09.21

[10] Ibid.

"Arbitration Agreement" in the WIPO Rules expresses the fundamental principle that arbitration occurs only when the parties cooperate. The WIPO Rules state unequivocally that the Arbitration Agreement does not have to be included in a contract expressing the parties' substantive rights (an "arbitration clause"). It may also arise as a result of a so-called "submission agreement," in which the agreement to arbitrate is made after the actual dispute has arisen. The latter is less common, because it is easier to agree on arbitration when the parties' relationship has not been harmed by a dispute.[11]

1.2 Benefits of international arbitration in resolving intellectual property rights

While alternative dispute resolution (ADR) has not been commonly used to resolve intellectual property and related conflicts in the past, it is growing more popular. In comparison to court litigation, international arbitration has a number of inherent unique features that make it a more suitable alternative for resolving IP disputes.

- Neutrality - ADR can be neutral to the parties' law and language, preventing any home court advantage that one of the parties might have in court-based litigation.
- Confidentiality - ADR proceedings and outcomes are kept private, allowing the parties to avoid concerns about the public impact of the dispute. This is especially important when it comes to commercial reputations and trade secrets.[12]
- International Element - Certain cross-border elements, such as parties from different jurisdictions and/or multiple substantive laws, are frequently present in IP disputes. For example, a global patent litigation may involve cases in multiple courts across multiple countries, raising the possibility of conflicting outcomes and potentially inconsistent decisions. This issue is easily resolved by referring an international dispute to arbitration.
- Finality and international enforceability of arbitral awards -The finality of arbitration awards benefits parties who refer their disputes to arbitration. Arbitral awards, unlike court decisions, are usually final and binding. They are not subject to appeal. The 1958 United Nations

[11] Phillip Landolt and Alejandro Garcia Commentary on WIPO Arbitration Rules, 2017, Section 1.2

[12] https://www.wipo.int/wipo_magazine/en/2016/si/article_0010.html last seen 03.09.21

Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which governs such settlements, essentially equalizes arbitral awards with domestic court judgments. This greatly simplifies cross-border enforcement of awards.[13]

- Speed and Efficiency of Arbitral Proceedings - In general, international arbitration is considered faster than court litigation. Another advantage is that many arbitration institutions offer parties the option of expedited and emergency arbitration rules and procedures, which can be advantageous in the IP context.
- Party autonomy - Unlike court litigation, the private nature of ADR allows parties to have more control over how their dispute is resolved. The parties can choose the most appropriate neutral to help them settle their dispute. Parties may also select the venue and language of the proceedings, as well as the applicable law.
- Expertise and Technical Knowledge of Arbitrators - Because intellectual property disputes are technical in nature, adjudicators should preferably have technical knowledge and expertise in the given field. One of the primary advantages of international arbitration is that the parties have the freedom and flexibility to select an arbitrator with specific knowledge of the field who is not required to be a former judge or lawyer. Certain international arbitration institutions also provide for specially designated panels of arbitrators specializing in intellectual property disputes.[14]

CHAPTER 2. Arbitrability of Intellectual property disputes

The first obstacle to overcome when analyzing arbitration is the so-called “arbitrability” of certain issues, specifically intellectual property issues. The term "arbitrability" refers to the possibility of specific topics becoming the subject of an arbitral agreement and, as a result, an arbitral proceeding. To be more specific, the legal term "arbitrability" refers to "whether certain

[13] Ibid.

[14] GAR, The Guide to Intellectual Property Arbitration, Law Business Research 2021, p. 29.

disputes are capable of resolution through arbitration" (also known as "objective arbitrability").[15] Arbitrability is one of the prerequisites for submitting a dispute to International Arbitration. It establishes the types of disputes that can be arbitrated by an arbitral tribunal.

Aside from the benefits that international arbitration provides the parties in resolving technology transfer disputes, the parties face one challenge. Arbitrability of the subject matter involved is an objection that can be raised against this forum.

To be referred to arbitration, the dispute must be 'arbitrable,' or capable of being resolved through arbitration. Aside from the contractual issues raised in the technology transfer agreement, the underlying subject matter is intellectual property.[16]

The question is whether a private institution, such as an arbitral tribunal, can rule on these issues.

How can arbitration be used in the above-mentioned matters, which are frequently handled by state courts?

However, the significance of the question of so-called objective arbitrability should not be overstated, because most intellectual property disputes are contractual in nature and thus theoretically capable of being settled directly by arbitration in most countries.[17]

In general, three approaches to the arbitrability of intellectual property disputes and the effects granted to arbitral awards issued in this context have emerged. First, States may consider disputes relating to the validity of an intellectual property right as arbitrable without regard to the effect of such issue on the arbitral awards. Second, they may regard such disputes as amenable to arbitration, but with an award that has only an inter partes[18] effect. Third, they do not permit such disputes to be resolved through arbitration.[19]

[15] FOX D., WEINSTEIN R., Arbitration and Intellectual Property Disputes, 2012, p.44

[16] "Planning for Dispute Resolution in International Technology Transactions," Steven C. Nelson, 7 Boston College International and Comparative Law Review (1984).

[17] T. Legler, "Arbitration of Intellectual property Disputes" 2/2019, pp.293

[18] Inter partes is the latin for "between the parties''

[19] T. Legler, "Arbitration of Intellectual property Disputes" 2/2019, p.293

Practically, not all matters relating to intellectual property disputes are recognized as arbitrable, and each State takes a different approach to the issue. There are states that take a liberal approach, while others take a very restrictive approach.

Patent validity is one of the issues that is least likely to be arbitrated, and this attitude can be explained by one main reason: "If laws authorize courts or component administrative agencies to decide the validity of patents, the dispute involving patent validity should be settled exclusively by these authorities." […] Because the patent right is granted only by the sovereign government, only the State or the State's designated representative can grant or invalidate it." [20]

We need to focus on the fact that there are two types of Arbitrability: Objective Arbitrability and Subjective Arbitrability.

The question of whether or not the subject matter of a dispute is arbitrable is referred to as objective arbitrability. The award may be set aside if the subject matter of the dispute is not arbitrable. [21]

Subjective arbitrability refers to a person's subjective capacity to validly conclude a binding arbitration agreement (and to participate in arbitration proceedings). The law applicable to that person determines whether or not a person has subjective capacity. [22]

2.1 Arguments raised in opposition to the Arbitrability of Intellectual property disputes

The traditional major obstacle to using arbitration to resolve intellectual property disputes was a fundamental issue of arbitrability. This is due to the fact that some intellectual property rights are derived from legal protection granted on a national level by the local sovereign power, which grants the beneficiaries certain exclusive rights to use and exploit the intellectual property in question. [23]

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[20] FOX D., WEINSTEIN R., Arbitration and Intellectual Property Disputes, 2012, p.45

[21] https://www.konrad-partners.com/knowledge-base/arbitration-guide/ii-the-arbitration-agreement last seen 04.09.21

[22] https://www.konrad-partners.com/knowledge-base/arbitration-guide/ii-the-arbitration-agreement last seen 04.05.21

[23] Final Report on Intellectual Property Disputes and Arbitration, International Chamber of Commerce, 1998, section 1.5 available at

This arbitrability problem manifested itself at various stages. First, when the dispute arose, the arbitrators' jurisdiction and authority would be challenged. This would jeopardize the arbitration and create uncertainty throughout the process. A second possible course of action would be for the party challenging the arbitrator's jurisdiction to seek an injunction, stay, or similar order from a court to halt the arbitration proceedings.[24]

Most of the major arbitration countries' laws have changed in recent years, and they are now expressly much more supportive of party autonomy than they were previously.

2.1.1 Arbitrability as a Ground for Award Non-Enforcement

The question of arbitrability can be raised at various stages. It has the authority to challenge the tribunal's jurisdiction and authority. If the jurisdiction is called into question at the outset of the dispute resolution process, it can create uncertainty. Arbitrability can be challenged in court of national jurisdiction to halt arbitral proceedings. Finally, it could be at the stage of enforceability after an award has been rendered.[25]

Article V of the New York Convention specifies grounds for challenge. Article V of the New York Convention specifies grounds for challenge.

According to Article V (2), recognition and enforcement of an arbitration award may also be refused if the competent authority in the country where recognition and enforcement is sought determines that: (a) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) recognition or enforcement of the award would be contrary to public policy.[26]

It emphasizes the point that the court has the authority to deny and not enforce an award based on the dispute's non-arbitrability.

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https://library.iccwbo.org/content/dr/COMMISSION_REPORTS/CR_0013.htm?l1=Bulletins&l2=ICC+International+Court+of+Arbitration+Bulletin+Vol.+9%2FNo.1+-+Eng last seen 06.09.21

[24] Ibid.

[25] Report on Intellectual Property Disputes and Arbitration, International Chamber of Commerce (ICC), ICC Dispute Resolution Library

[26] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) Article V.

2.1.2 Public policy challenges

Arbitrability and public policy issues are inextricably linked. One of the benefits of arbitration, namely party autonomy, is limited as a result of this. [27]The use of arbitration for Intellectual Property issues is virtually always challenged on the basis of public policy. The balancing act between the public good and private rights may be found in most countries' limitations on the use of international arbitration. When it comes to intellectual property, the public benefit takes precedence.

The arbitrability of Intellectual Property rights is always limited by public policy considerations. As previously stated, state grant of the right and public policy is inextricably linked. The states believe that IP rights cannot be valid if they are "subject to parties' free will and authority." This restriction is justified by the fact that it is up to the states to issue an intellectual property right. The state offers economic growth privileges while keeping the public interest in mind. It establishes policies that influence the usage of these intellectual property rights.[28]

2.1.3 Intellectual Property Rights (IPR) are statutory rights granted by the Sovereign

The right to intellectual property is territorial in nature. Each state has its own national law that governs intellectual property registration and enforcement.

The argument advanced against the arbitrability of intellectual property is that these rights are granted by states and that they have the sole authority to adjudicate disputes concerning them. National courts are said to be in charge of resolving the issues.[29]

[27] Global Arbitration Review, "Arbitrability and Public Policy Challenges" Elie Kleiman and Claire Pauly.

[28] Global Arbitration Review, "Arbitrability and Public Policy Challenges" Elie Kleiman and Claire Pauly.

[29] Territoriality in Intellectual Property Law: Examining the Tension between Securing Societal Goals and Treating Intellectual Property as an Investment Asset. *Emmanuel Kolawole Oke*oct.2018*

2.2 Available Solutions

International Arbitration is said not to be an appropriate forum to adjudicate disputes involving intellectual property because of objections raised regarding territoriality of IP, public policy, and the enforceability of the arbitral award. These arguments against the non-arbitrability of IP disputes can be answered in the following way.

To begin, the choice of substantive law to regulate the arbitration is crucial. Furthermore, the New York Convention gives states the authority to decide what matters are arbitrable under their national law.[30] Only a few jurisdictions, such as the United States and Switzerland, have taken a permissive approach to IP as arbitrable. Their stance on intellectual property arbitrability is explained further down. Second, in addition to the substantive law that limits the effects of the award, a correctly designed arbitration agreement can limit the effect of the award made between the parties.[31]

CHAPTER 3. Court Review Standards on Arbitral Awards

Although arbitration awards are supposed to be final, judicial review is nevertheless an important element of the process. Nonetheless, the subject of what is the proper scope of judicial review of arbitration awards continues to be debated in courts today.

Court review standards have long been a source of concern not only in intellectual property disputes, but in general among those who sincerely support the development of arbitration.

It is interesting to know what standard the court should apply at the recognition and enforcement stage, when the basis is arbitrability; this issue is certainly a dilemma, but the concern is heightened because intellectual property is of greater public interest.

[30] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) article II (1) "Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

[31] Section 294(c) of the United States Code limits the effect of the award to the parties to the agreement.

As mentioned earlier, Article 5 of the New York Convention deals with arbitrability as a refusal of enforcement of arbitral awards. Enforcement of an award can be refused under Article V(2)(a) if the subject matter cannot be arbitrated under the laws of the enforcing state. [32]Non-arbitrable subjects have no international definition or common standard. If mandatory national laws stipulate that certain matters must be determined solely by domestic courts, a subject is deemed non-arbitrable. Intellectual property is also one of the Non-arbitrable issues in several countries, but Georgia is not on their list.

The regulation of issues of interference in the state court's arbitration activities is extremely important in practice. Indeed, it is here that the interests of the state and arbitration intersect directly, and since the will of the state plays the most important role in the successful functioning of arbitration, both within our country and, more importantly, in relation to international institutions, through harmonization with international normative acts. Arbitral awards are usually enforced by the parties voluntarily, so that there is no need to involve the judiciary. Otherwise, it becomes necessary for the state court to enforce it. It is true that the arbitral award has the same legal force as the parties in relation to the court decision, but it itself cannot have the power of enforcement.

It would not make sense for the arbitral tribunal to have no guarantees of enforcement of the arbitral award. Specific legal or economic consequences for the parties can only arise after enforcement.

When the parties choose arbitration to resolve their dispute, they are expressing their desire to forego the State's judicial power in favor of a private way of settling the problem. As a result, the parties have a genuine expectation that their dispute will be heard by an arbitrator (or arbitrators) designated by the parties, whose judgment will be final and not subject to judicial review.[33]

[32] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) Article V.

[33] Review of Georgian Business Law. II edition. "Public order" as a basis for annulment of the arbitral award or refusal to acknowledge and enforce it (a brief overview of Georgian practice) Sophio Tkemaladze. p.16

The party against which the arbitral award is rendered has two mechanisms to oppose the arbitral award: 1. to request its annulment; 2. Request its refusal of enforcement. Both of these mechanisms have the same basis, i.e., the reasons why it is possible to overturn an arbitral award or refuse to recognize and enforce it are essentially the same.

3.1 The "Minimalist" and "Maximalist" standards of review approaches

Parties who are dissatisfied with arbitration awards frequently seek judicial review. Procedurally, review is sought in an action to modify or set aside the award.

The "Minimalist" approach emphasizes: the principle of award finality; courts cannot review awards on the merits; awards should be overturned for reasons related to the merits only in cases of serious violations of public policy; full-fledged review conflicts with acceptance of arbitrability; trust in arbitration and arbitrators.[34]

The "Maximalist" approach emphasizes: the risks of violation of concrete law; arbitration being used to circumvent concrete law; the fundamental nature of concrete law; courts should be able to review the award in depth to ensure that rules were "correctly" applied by the arbitrators.[35]

It is problematic to decide which approach is more appropriate at the stage of recognition-enforcement of intellectual property disputes, when the basis is arbitrability.

A large degree of judicial control over arbitral awards can be justified on the grounds that judges are more likely than arbitrators to develop and apply principles formulated with broad social values in mind, as well as to be aware of the cumulative impact of a series of decisions.

A light approach, on the other hand, will achieve what is widely regarded as the parties' primary goal in resorting to arbitration—avoiding litigation.[36]

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[34] Bruno Zeller, Gautam Mohanty, Sai Ramani Garimella, "Enforcement of Foreign Arbitral Awards and the Public Policy Exception, p.105

[35] Ibid.

[36] Harvard Law Review Vol. 63, No. 4 (Feb., 1950), p. 681

3.2 The Genentech Case

Before getting into the specifics of the case, I'd like to point out that it's an intriguing case for anyone interested in intellectual property and competition law. Also useful for lawyers interested in arbitration. This case introduces a problem that is reflected in the standards of court review. Because the case involves intellectual property and the enforcement of an arbitral award, I thought it was appropriate to analyze it.

The Paris Court of Appeal's application to the Court of Justice of the European Union (CJEU) for a preliminary ruling on the question of whether paying royalties for a license referring to a patent that has been successively revoked with retroactive effect is incompatible with the provisions of Article 101 TFEU is of interest to IP and competition law practitioners.[37]

The above-mentioned request for a preliminary ruling was addressed within the context of a proceeding for the setting aside of an ICC arbitral award on the basis of its alleged incompatibility with EU law, which is of interest to arbitration practitioners. In addition, in his Opinion to the Court, Advocate General Wathelet addressed the contentious issue of what standard of review must be applied by national courts in EU Member States when determining the compatibility of international arbitral awards with the EU competition law regime.[38]

The payment of royalties related to a revoked patent is prohibited under Article 101 TFEU[39], and thus the arbitral award is incompatible with public policy provisions forming part of the EU competition law regime, Genentech argued in its application to the Court of Appeal of Paris to set aside the award.

Because it was unclear how EU competition law should be interpreted, the Paris Court of Appeal asked the CJEU to issue a preliminary ruling on the following question: “Must the provisions of Article 101 TFEU be interpreted as precluding effect being given, where patents are revoked, to

[37] http://arbitrationblog.kluwerarbitration.com/2016/07/18/genentech-decision-reserved-for-18-july-2016/?_ga=2.168604897.1358080087.1630865394-776596749.1599331860 last seen 05.09.21

[38] Ibid.

[39] Treaty on the Functioning of the European Union- Article 101.

a license agreement which requires the licensee to pay royalties for the sole use of the rights attached to the licensed patent?"[40]

The Court's response to this question was straightforward: Article 101(1) TFEU does not prohibit the imposition of a contractual requirement providing for payment of a royalty for the exclusive use of a technology that is no longer covered by a patent, on condition that the licensee is free to terminate the contract."[41]

Since 2004, French courts have been regarded as the most ardent supporters of what has been dubbed the "minimalist" approach to the review of arbitral awards. To successfully invoke incompatibility with the EU competition law regime as a ground for annulling an arbitral award, such incompatibility must be "flagrante[42], effective, and concrete." If those three conditions are not met, French courts should not be allowed to investigate the award further and, as a result, cannot set aside an award that is not manifestly and egregiously in violation of public policy provisions.[43]

The French approach is often criticized by various countries, as many European Union countries use a maximalist approach in judicial review.

In summary, AG Wathelet believed that a minimalist standard of review of arbitral decisions, such as the one used by French courts, that only sanctions blatant and significant breaches of EU competition law, is incompatible with the concept of effectiveness in the application and enforcement of EU legislation.

The CJEU did not follow the AG's reasoning on this topic because the issue of the standard of review of arbitral awards was not, strictly speaking, part of the question raised by the Court of

[40] JUDGMENT OF THE COURT (First Chamber) 7 July 2016, **Genentech Inc.** v **Hoechst GmbH,** section 19. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A62014CJ0567 last seen 05.09.21

[41] Id. section 40

[42] Flagrante-blatant

[43] http://arbitrationblog.kluwerarbitration.com/2016/07/18/genentech-decision-reserved-for-18-july-2016/?_ga=2.168604897.1358080087.1630865394-776596749.1599331860 last seen 05.09.21

Appeal of Paris in its request for a preliminary ruling. As a result, the Genentech judgment remained silent on this heavily debated issue.[44]

CJEU missed a chance to clarify a very important issue. There is a discernible trend toward abandoning the pure minimalist approach, at least in the practice of French courts.

Chapter 4. The approach of various legal systems to the arbitrability of intellectual property disputes

IP disputes between private parties are generally considered arbitrable in civil law jurisdictions. This is especially true in intellectual property arbitrations involving contractual claims and obligations. Because a patent is a privilege issued by a State to a patent holder and is regarded to be limited to a specified subject matter, area, and time, many IP-related disputes, such as patent validity, are still mostly brought before national courts and considered non-arbitrable.[45]

The United States and Switzerland are two countries that support arbitration of intellectual property issues, with clear legal provisions allowing for such arbitration. Because the subject is intellectual property, it is critical to discuss it in the context of technology transfer conflicts. The following part will look at the present legislative framework for dealing with Intellectual Property arbitration in order to gain a better understanding of how these disputes are handled in various jurisdictions.[46]

A general classification of the approaches to arbitrability of various national jurisdictions distinguishes three major groups: first, jurisdictions where IP disputes are not arbitrable at all; second, jurisdictions where IP disputes may be submitted to arbitration, but only under certain limitations and conditions; and third, jurisdictions where arbitrability of IP disputes is favorably allowed with certain restrictions.[47]

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[44] http://arbitrationblog.kluwerarbitration.com/2016/07/18/genentech-decision-reserved-for-18-july-2016/?_ga=2.168604897.1358080087.1630865394-776596749.1599331860 last seen 05.09.21

[45] Law Business Research 2021, pp. 34-35, GAR, The Guide to IP Arbitration

[46] Law Business Research 2021, pp. 36, GAR, The Guide to IP Arbitration

[47] T. Legler, "Arbitration of Intellectual property Disputes" 2/2019, p.296

4.1 SWITZERLAND

Switzerland is well known for its liberal arbitration policy, as intellectual property disputes have traditionally been considered arbitrable. public policy issues and arbitration are well balanced and co-exist. This is based on Section 177(1) of Swiss International Private Law, which gives "arbitrability" an extremely broad definition.[48]

The Swiss approach guarantees the parties that the award will be enforced and will not be overturned on the basis of non-arbitrability.

Arbitral awards on patent validity are recognized and enforced by the Swiss Federal Institute of Intellectual Property (for the purpose of making necessary entries in the patent register) if they have been declared enforceable by a Swiss court. Recognized arbitral awards will have an "erga omnes"[49] effect as a result of this process.[50]

4.2 Germany

Arbitrations involving genuine IP law issues, such as patent validity, are still uncommon in Germany. Traditionally, intellectual property disputes were regarded as non-arbitrable. Instead, patent litigation remains the norm. [51]This is due, in part, to the fact that Germany has a 'split' or 'bifurcated'[52] patent litigation system.

Unlike in many other jurisdictions, patent validity proceedings are heard independently of infringement claims. The latter involves a patent holder suing for damages or injunctive relief as a result of alleged patent infringement. In Germany, infringement claims are handled by 12

[48]The Arbitration Act of Switzerland. Arbitration may be used to resolve any dispute or financial interest, according to Article 177 (1) of the Act.

[49] Erga omnes- Against all, toward all

[50] T. Legler, "Arbitration of Intellectual property Disputes" 2/2019, p.294

[51] 'What You Need to Know About Patent Litigation in Germany,' Matthew Bultman, Law 360, 2018.

[52] Bifurcated- Divided

regional courts with specialized divisions.[53] In contrast, patent validity disputes (also known as "revocation actions") are exclusively heard by the Federal Patent Court (FPC) in Munich.[54]

Unsurprisingly, the bifurcated system has received a lot of flak. Apart from the additional costs of parallel proceedings, a major source of concern has been the fact that an alleged infringer cannot raise a defense or counterclaim based on patent invalidity in infringement proceedings. Because infringement claims are frequently resolved before revocation actions, patent holders may enforce a successful infringement judgment provisionally, regardless of a pending appeal or parallel revocation action. This raises the possibility that a patent will be enforced despite being invalid, leaving the parties in a state of legal uncertainty until the revocation action is resolved (the "injunction gap").[55]

Under current law, an alleged infringer has three primary options:

- Making an application for suspension of the infringement proceedings;[56]
- Requesting a provisional stay of enforcement of the infringement judgment;[57] or
- Seeking an action for retrial of the case.[58]

Suspension applications are subject to the discretion of the courts and are generally denied. In light of the patent's registration and the limited duration of the right of exploitation, the patent holder's interest in the continuation of the proceedings is deemed to outweigh the alleged infringer's interest in a suspension. To be successful, an applicant must demonstrate that a patent will be revoked 'in all probability.' A suspension will also be granted if the FPC informs the infringement court that the patent is invalid (or revokes it)[59]

When an appeal against an infringement judgment is pending, the second option, a request for a provisional stay of enforcement, is available. Provisional stays, like suspensions, are granted in

[53] Special theme, World Intellectual Property Indicators 2018, page 13

[54] Annual Report 2019, Business Report 2019, pages 163–164, Federal Patent Court.

[55] Journal of Economic Behavior and Organization, 'An Analysis of the Bifurcated Patent Litigation System.'2016, page 221

[56] German Code of Civil Procedure, Section 148 (GCCP)

[57] The GCCP's sections 719(1) and 707(1)

[58] The GCCP Section 580 No. 6

[59] BGH (Kartellsenat), Decision of July 17, 2018 – KZR 35/17

limited circumstances (i.e., where irreversible damage is at stake or the judgment was clearly incorrect), but will generally succeed if the FPC later revokes the patent.[60]

4.3 United States

In the United States, federal statutory law expressly states that parties can agree to arbitrate patent disputes by including an arbitration provision in a contract involving a patent or by agreeing to arbitrate an existing patent dispute. The following is the text of the statute:

"A contract involving a patent or any right under a patent may contain a provision requiring arbitration of any dispute relating to the patent validity or infringement arising under the contract. In the absence of such a provision, the parties to an existing patent validity or infringement dispute may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract."[61]

The same statute states that any arbitral award rendered will have only "inter partes" effect:

"An award by an arbitrator shall be final and binding between the parties to the arbitration but shall have no force or effect on any other persons."

In the United States, it is clear that arbitration deals with such disputes without any problems and is even more popular in court.

The arbitrability of copyright and trademark issues has been treated broadly by US courts. It has determined that there is no express legislation prohibiting the use of arbitration to resolve contract-related disputes. [62]

Furthermore, as the importance of international arbitration has grown, the courts have stated in one of their earliest decisions, Scherk v. Alberto Culver & Co.[63], that issues are arbitrable even

[60] BGH, Decision of September 16, 2014 – X ZR 61/13

[61] 294 (a) of the United States Code.

[62] "Arbitrability of Intellectual Property Issues in the United States," David W. Plant, Worldwide Forum on the Arbitration of Intellectual Property Disputes (Geneva: WIPO publications)

if they aren't arbitrable domestically if the underlying transaction is "truly international" in character.

Arbitrability of issues concerning securities law and antitrust law can be extended to intellectual property arbitrability since they have identical characteristics and raise public policy concerns in which the state grants exclusive rights while preventing monopolies and market abuse.

4.4 South Africa

Arbitration is a well-established and widely used method of resolving commercial disputes in South Africa. The adoption of the South African International Arbitration Act in 2017 significantly increased the popularity of arbitration. The International Arbitration Act incorporates into South African law the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Arbitration Law). Subject to the provisions of the International Arbitration Act, the UNCITRAL Model Arbitration Law, as adapted into Schedule 1 to the International Arbitration Act, applies in South Africa. Long-awaited development has resulted in a significant increase in the number of international arbitrations held in South Africa, as well as the development of initiatives aimed at promoting South Africa as an important regional arbitration center.[64]

South African law is defined as a mixed legal system, with elements of civil law derived from Roman Dutch law and elements of common law derived from English law. National Jurisdiction where Arbitration of IP disputes is unavailable is South-Africa. According to Article18(1) of the South African Patent Act of 1978: “In the first instance, no tribunal other than the commissioner shall have jurisdiction to hear and decide any proceeding [...] relating to any matter under this Act.”[65]

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[63] https://supreme.justia.com/cases/federal/us/417/506/ last seen 2.09.21

[64] https://uk.practicallaw.thomsonreuters.com/4-502-0878?transitionType=Default&contextData=(sc.Default)&firstPage=true#:~:text=Arbitration%20is%20a%20well%2Destablished,commercial%20disputes%20in%20South%20Africa.&text=The%20International%20Arbitration%20Act%20incorporates,Law)%20into%20South%20African%20law. Last seen 03.09.21

[65] PATENTS ACT NO. 57 OF 1978, Article 18 (1)

South Africa expressly prohibits arbitrability of IP disputes. Unfortunately, South Africa does not share the liberal approach of countries like the United States and Switzerland. The South African approach is quite outdated.

Chapter 5. Challenges of arbitrability of Intellectual Property disputes in Georgia

Each country, taking into account its political, social and economic policies, determines for itself what kind of relations it has a high interest in and submits to them exclusively the jurisdiction of the court. These are disputes that cannot be referred to arbitration, i.e., non-arbitrability.

Georgia's Arbitration law is based on UNCITRAL Model Law. Georgia passed the arbitration law at the end of 2009. The law is a slightly modified version of the Model Law. It governs issues concerning the formation and conduct of arbitration in Georgia, as well as the recognition and enforcement of arbitral awards, including those rendered outside of Georgia.

Law of Georgia on Copyright and Related Rights does not address intellectual property arbitration. The law mentions only litigation in court, but nowhere denies the arbitrability of intellectual property.[66] However, reference to the court does not always refer exclusively to the bodies of judicial (public) system and implies a wider, general right of access to justice, i.e., includes the possibility of dispute resolution by arbitration.[67]

The main norm, which is guided by the arbitration proceedings in Georgia, is Article 2 of the Law of Georgia on Arbitration, the article clarifies, that: Arbitration can only be a property dispute, i.e., a dispute that does not relate to a personal non-property right.[68]

According to Article 6 (1) of the European Convention on Human rights (ECHR): everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.[69]

[66] Law of Georgia on Copyright and Related Rights

[67] Arbitration Guides for the First Instance and Appeal Courts. 2018, Giorgi Kekenadze, Sophio Tkemaladze p.23

[68] The Law of Georgia on Arbitration, Article 2 (a)

[69] European Convention on Human Rights, article 6 (1)

The law on arbitration in Georgia and the Code of Civil Procedure do not list what disputes cannot be considered by arbitration, although such prohibitions may be enshrined in other laws. Unfortunately, the laws of Georgia are silent on intellectual property arbitrability.

It should also be noted that unlike the first part of Article 31 of the Constitution of Georgia, which only mentions the court[70], the ECHR uses the word "tribunal"[71], which is quite broadly defined and refers to both the court and arbitration.

Georgia has Connected to the ECHR[72], so we can assume that in the conduct of disputes we are guided by the Convention, where everyone has the right to freely choose the tribunal to hear the case.

As we can see, intellectual property disputes in Georgia are arbitrable, however, the court's role in the arbitration proceedings and in enforcing the arbitral award is especially noteworthy. The law established a level of judicial control, which begs the question, "Does arbitration lose its significance?"[73] Increasing the court's role and restricting arbitration rights can lead to inefficiency and distrust of existing arbitrators.

5.1 When the basis is arbitrability, what standard should Georgian courts apply in reviewing an arbitral award at the recognition and enforcement stage?

When the arbitral tribunal reviews the arbitral award and the question arises as to whether the dispute was the subject of arbitration, the court should focus on the fact that, like the New York Convention (Georgia is a party) and The Law of Georgia on Arbitration is based on the presumption of the validity of the arbitration agreement. This means that the arbitration

[70] CONSTITUTION OF GEORGIA, article 31 (1)

[71] Guide on Article 6 of the European Convention on Human Rights (Right to fair trial) (Civil limb) section 74: "Hence, a "tribunal" may comprise a body set up to determine a limited number of specific issues, provided always that it offers the appropriate guarantees (Lithgow and Others v. the United Kingdom, § 201, in the context of an arbitration tribunal)."

[72] Press Country Profile, European Court of Human Rights. Georgia ratified the European Convention on Human Rights in 1999. p.1

[73] Nikoloz Pitskhelauri., Problems of Harmonization of Georgian Arbitration Legislation with EU Countries and International Legislations, Tbilisi, 2015, p.52

agreements are genuine and must be enforced. [74]"Unless it finds that the said agreement is null and void, inoperative or incapable of being performed."[75]

The Court must bear in mind that Article 2 of the New York Convention and Article 9 of the Law of Georgia on Arbitration are acts in favor of enforcement. In order to strengthen the friendship of arbitration in Georgia, it is necessary to assume that the arbitration agreement is genuine.[76]

As we have seen in Georgia, where arbitration is still in its early stages, the courts face difficulties due to the overload of disputes during the timely consideration of the case. Arbitration is much faster and more flexible, while also providing the parties with the opportunity to have more knowledgeable arbitrators consider cases who are not judges and may be specialists in a specific field.

Nowadays, arbitration needs to improve its reputation, which will benefit the courts and the parties, as well as the arbitration itself.

The use of a minimalist standard in the review of arbitral awards by the courts will be a good chance for the development of arbitration and will help a fair balance of interests. If the arbitral award is not within the jurisdiction of the arbitral tribunal and does not call into question the arbitration capacity, it will be a great step forward for the development of a particular legal field.

The standard of maximalist review undermines confidence in arbitration, which will not come as a surprise. It has been noted so far that the change in trend in France and the transition from a minimalist to a maximal review standard has led to a decline in the popularity of arbitration. It is unfortunate that the CJEU missed the chance to make a very important clarification on the standards of judicial review.[77]

Georgia, which is moving slowly towards the development of arbitration, needs to be more diligent in establishing a standard of review during the recognition and enforcement of arbitration.

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[74] Arbitration Guides for the First Instance and Appeal Courts. 2018, Giorgi Kekenadze, Sophio Tkemaladze p.20

[75] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) Article 2, The Law of Georgia on Arbitration- article 9.

[76] Id. p.21

[77] Supra.39

It would be fair for the court to consider that a particular matter has been carefully and diligently considered by the arbitral tribunal, not to interfere with its jurisdiction, unless of course any shocking breach would be in the public interest.[78]

Of course, intellectual property disputes are of high public interest, but Georgian law does not give us reason to think about their non-arbitrability.

In Georgia, the historical context of arbitration is unfavorable. The 1997 law on private arbitration left little room for practice. There were often illegal and unscrupulous arbitrations during the period of old law, when there was no need to go to court to enforce arbitral awards, and thus the legitimate interests of the people were violated. Unfortunately, skepticism about arbitration persists today Stale. In addition, the institution of arbitration has not yet developed in Georgia; there is no mechanism for self-regulation of arbitrators, and no society that has established the rules of conduct for their own activities.[79] All this further reinforces the view that the court should not use a maximalist approach in reviewing the arbitral award if it does not want to end up with a very useful institution in Georgia, which is called arbitration. The refusal of the court to enforce the decision on the basis of arbitration shall be substantiated by a high standard of public order.

5.2 The role of Sakpatenti in the development of arbitration in Georgia

Sakpatenti has recently been trying to deepen its knowledge of alternative dispute resolution. Their projects and workshops are aimed at strengthening arbitration in Georgia and highlighting the benefits of dealing with intellectual property disputes in arbitration.

EUGIPP is a joint project of the European Union and Georgia on intellectual property, which aims to strengthen the intellectual property system in Georgia. The project is three years old and it will be completed by the end of 2022. The project is implemented by the European Union Intellectual Property Office (EUIPO) on behalf of the European Union, and the main beneficiary - the Georgian National Intellectual Property Center - Sakpatenti.

[78] Arbitration Guides for the First Instance and Appeal Courts. 2018, Giorgi Kekenadze, Sophio Tkemaladze p.22

[79] Review of Georgian Business Law. II edition. "Public order" as a basis for annulment of the arbitral award or refusal to acknowledge and enforce it (a brief overview of Georgian practice) Sophio Tkemaladze. p.28

Within the framework of the EU-Georgia Joint Intellectual Property Project (EUGIPP), a seminar on "Alternative Dispute Resolution Mechanisms" was organized by Sakpatenti and the EUGIPP Project Team.[80]

Although we do not find in the laws a specific record that indicates arbitration in intellectual property disputes. Sakpatenti's attempt to relate to EU law, to raise awareness of the role of arbitration and mediation, suggests that it is free to hear intellectual property disputes in arbitration.

Chapter 6. The World Intellectual Property Organization's (WIPO) role, and its arbitration and mediation center

The World Intellectual Property Organization provides specialized procedures for technology and intellectual property disputes at the WIPO Arbitration and Mediation Center. WIPO Arbitration and Mediation Center was established in Geneva in 1994 with the goal of providing an option for the resolution of international commercial disputes between private parties that was specifically tailored to IP disputes.

The WIPO Arbitration and Mediation Center provides private parties with time- and cost-effective alternative dispute resolution (ADR) options such as mediation, arbitration, expedited arbitration, and expert determination to help them resolve domestic or cross-border commercial disputes. The WIPO Center is international and specializes in intellectual property and technology disputes. In addition, the WIPO Center is the global leader in providing domain name dispute resolution services under the WIPO-designed UDRP.[81]

WIPO ADR is specialized, adaptable, and private. Its consensual nature frequently results in a less adversarial process, allowing the parties to establish, maintain, or improve profitable business relationships with one another. ADR, when used properly, can save both time and money.

One of the last steps in the dispute resolution process is to determine the form of International Arbitration once the parties have decided to arbitrate. The parties have the authority to appoint

[80] https://www.sakpatenti.gov.ge/ka/news_and_events/368/ last seen 05.09.21

[81] https://www.wipo.int/amc/en/ last seen 02.09.21

the arbitrators who will resolve their disagreements. Parties have the option of choosing between two types of international arbitrations. The parties have the option of using ad hoc arbitration or appointing an institution to assist in guiding and administering the arbitration under its rules of arbitration.[82]

Many institutions have been established around the world to manage arbitration. The American Arbitration Association (AAA), the International Centre for the Settlement of Investment Disputes (ICSID), and the International Chamber of Commerce (ICC) are among the most well-known. The guidelines created by the institution regulate the tribunal that the institution appoints. The parties can choose an institution by including an arbitration clause in their contracts that names the institute and the rules they want to follow if a disagreement arises in the future.

When compared to Institutional Arbitration, parties find Ad hoc Arbitration to be less expensive and more flexible. However, in the absence of an institution to guide them through the arbitration process, parties fail to recognize that greater cooperation is required. According to studies, more than two-thirds of respondents preferred institutional arbitration over ad hoc arbitration.[83]

The number of IP-related disputes at the World Intellectual Property Organization (WIPO), as well as other reputable international arbitration institutions, is steadily increasing. This obvious shift from litigation to arbitration of IP disputes is logical and expected – because IP-related disputes are inherently international in nature, arbitration is regarded as a more appropriate and efficient dispute resolution method than litigation. Given the importance of intellectual property to the global economy, this trend is expected to continue, with the number of IP disputes increasing.

WIPO ADR cases were primarily based on contractual clauses; however, some cases were submitted to WIPO ADR as a result of a submission agreement reached after the dispute arose.

[82] General principles of law in international arbitration. A.Redfern & M.Hunter. p. 52

[83] https://www.nortonrosefulbright.com/en-us/knowledge/publications/0cd56e49/2020-litigation-trends-annual-survey last seen 02.09.21

They reviewed more than 800 cases from 2011 to 2020, and the popularity of arbitration has grown over the years.[84]

Large corporations, SMEs, and startups from a variety of industries and sectors, as well as artists and inventors, R&D centers, universities, producers, and collecting societies.

parties in WIPO ADR cases were:

Algeria, Argentina, Australia, Austria, Belgium, Belize, Brazil, Cameroon, Canada, China, Colombia, Cyprus, Czech Republic, Denmark, Dominican Republic, Finland, France, Germany, Ghana, Greece, Honduras, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Kenya, Lebanon, Luxembourg and etc.[85]

Damages, infringement declarations, and specific performance, such as a declaration of non-performance of contractual obligations or of infringement of rights, additional safeguards for the preservation of evidence confidentiality, the provision of a security, the production of data, the delivery of goods, and the consignment of goods, have been among the remedies sought in WIPO mediation and arbitration proceedings (including determination of licensing terms).

The WIPO Center also serves as a resource center to raise awareness of the important role that ADR can play in various sectors. It offers ADR advice to interested private and public entities, as well as IP-related ADR training through workshops and conferences. [86]

Conclusion

[84] https://www.wipo.int/amc/en/center/maac/index.html last seen 05.09.21

[85] https://www.wipo.int/amc/en/center/caseload.html last seen 05.09.2021

[86] https://www.wipo.int/amc/en/center/advantages.html last seen 05.09.21

Based on analysis of theoretical material and practical research, I believe that arbitration is one of the most important and flexible mechanisms for resolving private disputes today, as the overload of the judiciary system.

Arbitration is a private process, which is especially beneficial in IP issues due to the sensitive nature of the information involved. Furthermore, specific knowledge is frequently necessary to properly settle technical disputes, a challenge that might be overcome by choosing suitably competent arbitrators.

The thesis payed special attention to the arbitrability of IP disputes, as there are different regulations in different legal systems, however, on the example of finally developed countries, we can say that arbitration occupies an important place in intellectual property disputes.

The main problem that emerged during the writing of the topic is that there is no specific provision in Georgian law that would allow or prohibit the consideration of intellectual property disputes in arbitration.

Also, a dilemma is the standard of review of arbitral awards by courts, when the basis is arbitrability, although this dilemma is not only in intellectual disputes, but since the public interest is high in these disputes, it is interesting what standard courts can use in reviewing arbitral awards. CJEU missed a chance to clarify the standard by which courts should be guided during recognition and enforcement stage when the basis is arbitration.[87] The debate between minimalist approach and Maximalist standard is not over yet.[88]

Using Georgia as an example, we may suggest that the courts should improve their understanding of arbitration. Georgian courts should try to follow the minimalist standard while reviewing arbitral awards. Analysis of the legal systems of different countries has shown that highly developed countries such as the United States and Switzerland prefer arbitration when it comes to intellectual property disputes. Arbitration is a very strong institution in these countries. It is difficult to compare Georgia with countries that have more experience, but the fact is that liberal approaches have strengthened their legal systems. If the courts of Georgia

[87] JUDGMENT OF THE COURT (First Chamber) 7 July 2016, **Genentech Inc.** v **Hoechst GmbH,** section 19. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A62014CJ0567 last seen 05.09.21

[88] http://arbitrationblog.kluwerarbitration.com/2016/07/18/genentech-decision-reserved-for-18-july-2016/?_ga=2.168604897.1358080087.1630865394-776596749.1599331860 last seen 05.09.21

review the arbitral awards with a minimalist approach, this will be one of the steps forward for the development of arbitration.

Bibliography

T. Legler, “Arbitration of Intellectual property Disputes” 2/2019, p.291

Convention Establishing the World Intellectual Property Organization Signed at Stockholm on July 14, 1967 and as amended on September 28, 1979, pp.1

GAR, The Guide to Intellectual Property Arbitration, Law Business Research 2021, p. 26.

Alternative Dispute Resolution,” N. BROADBENT, Legal Information Management 2009, vol. 9, p. 195

“Alternative Dispute Resolution,” N. BROADBENT, Legal Information Management 2009, vol. 9, p. 196

https://libraryguides.jmls.edu/c.php?g=261791&p=1750896

https://www.wipo.int/wipo_magazine/en/2016/si/article_0010.html

FOX D., WEINSTEIN R., Arbitration and Intellectual Property Disputes, 2012, p.44
Final Report on Intellectual Property Disputes and Arbitration, International Chamber of Commerce, 1998, section 1.5 available at https://library.iccwbo.org/content/dr/COMMISSION_REPORTS/CR_0013.htm?l1=Bulletins&l2=ICC+International+Court+of+Arbitration+Bulletin+Vol.+9%2FNo.1+-+Eng last seen 06.09.21

“Planning for Dispute Resolution in International Technology Transactions,” Steven C. Nelson, 7 Boston College International and Comparative Law Review (1984).

Report on Intellectual Property Disputes and Arbitration, International Chamber of Commerce (ICC), ICC Dispute Resolution Library

United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) Article V.

Article: Global Arbitration Review, “Arbitrability and Public Policy Challenges” Elie Kleiman and Claire Pauly
United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)

Section 294(c) of the United States

Law Business Research 2021, pp. 34-35, GAR, The Guide to IP Arbitration

The Arbitration Act of Switzerland- article 177 (1)
What You Need to Know About Patent Litigation in Germany,' Matthew Bultman, Law 360, 2018.
Special theme, World Intellectual Property Indicators 2018, page 13
Annual Report 2019, Business Report 2019, pages 163–164, Federal Patent Court.
Journal of Economic Behavior and Organization, 'An Analysis of the Bifurcated Patent Litigation System.'2016, page 221
German Code of Civil Procedure, Section 148 (GCCP)
BGH (Kartellsenat), Decision of July 17, 2018 – KZR 35/17
BGH (Beschluss des X. Zivilsenats) Decision of September 16, 2014 – X ZR 61/13
294 (a) of the United States Code.
"Arbitrability of Intellectual Property Issues in the United States," David W. Plant, Worldwide Forum on the Arbitration of Intellectual Property Disputes (Geneva: WIPO publications)

https://supreme.justia.com/cases/federal/us/417/506/

[1]https://uk.practicallaw.thomsonreuters.com/4-502-0878?transitionType=Default&contextData=(sc.Default)&firstPage=true#:~:text=Arbitration%20is%20a%20well%2Destablished,commercial%20disputes%20in%20South%20Africa.&text=The%20International%20Arbitration%20Act%20incorporates,Law)%20into%20South%20African%20law

PATENTS ACT NO. 57 OF 1978, Article 18 (1)

Law of Georgia on Copyright and Related Rights

European Convention on Human Rights, article 6 (1)

CONSTITUTION OF GEORGIA, article 31 (1)

Guide on Article 6 of the European Convention on Human Rights (Right to fair trial) (Civil limb) section 74:
"Hence, a "tribunal" may comprise a body set up to determine a limited number of specific issues, provided always that it offers the appropriate guarantees (Lithgow and Others v. the United Kingdom, § 201, in the context of an arbitration tribunal)."

https://www.sakpatenti.gov.ge/ka/news_and_events/368/ last seen 05.09.21

[1] Nikoloz Pitskhelauri., Problems of Harmonization of Georgian Arbitration Legislation with EU Countries and International Legislations, Tbilisi, 2015, p.52

United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) Article V.

Review of Georgian Business Law. II edition. "Public order" as a basis for annulment of the arbitral award or refusal to acknowledge and enforce it (a brief overview of Georgian practice) Sophio Tkemaladze. p.16

Overview of Legal and Practical Aspects of Arbitration in Georgia, Caucasus Research Resource Center, February 2018. p. 28

Bruno Zeller, Gautam Mohanty, Sai Ramani Garimella, "Enforcement of Foreign Arbitral Awards and the Public Policy Exception, p.10
Harvard Law Review Vol. 63, No. 4 (Feb., 1950), p. 681
http://arbitrationblog.kluwerarbitration.com/2016/07/18/genentech-decision-reserved-for-18-july-2016/?_ga=2.168604897.1358080087.1630865394-776596749.1599331860
Treaty on the Functioning of the European Union- Article 101
JUDGMENT OF THE COURT (First Chamber) 7 July 2016, **Genentech Inc.** v **Hoechst GmbH,** section 19. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A62014CJ0567 last seen 05.09.21
http://arbitrationblog.kluwerarbitration.com/2016/07/18/genentech-decision-reserved-for-18-july-2016/?_ga=2.168604897.1358080087.1630865394-776596749.1599331860 last seen 05.09.21

http://arbitrationblog.kluwerarbitration.com/2016/07/18/genentech-decision-reserved-for-18-july-2016/?_ga=2.168604897.1358080087.1630865394-776596749.1599331860 last

Review of Georgian Business Law. II edition. "Public order" as a basis for annulment of the arbitral award or refusal to acknowledge and enforce it (a brief overview of Georgian practice) Sophio Tkemaladze. p.28

https://www.wipo.int/amc/en/
General principles of law in international arbitration. A.Redfern & M.hunter. pp. 52
https://www.nortonrosefulbright.com/en-us/knowledge/publications/0cd56e49/2020-litigation-trends-annual-survey
https://www.wipo.int/amc/en/center/maac/index.html
https://www.wipo.int/amc/en/center/caseload.html
https://www.wipo.int/amc/en/center/advantages.html