Contents

7	orewo	ord			xxi
	ist of	abbrev	iations		XXV
Γ	able (of cases	;		xxix
l				nternational context	1
			duction		1
	1.2	The r	nature of	IP and IPRs	2
		1.2.1	Concep	t and definition	2
			1.2.1.1	'Immaterial' character of IP	1 2 2 2 2 3 3 5 5
			1.2.1.2	Types of rights and protection requirements	3
		1.2.2	Rationa	les and economic importance	5
				Rationales for protection	5
			1.2.2.2	Economic importance	9
	1.3	Princ	iples of in	iternational IP law	10
		1.3.1	Prelimir	nary remarks: sources of international law and treaty	
			interpre	tation	10
		1.3.2	Specific	features of IP conventions	12
			1.3.2.1	Territoriality: the defining element of	
				international protection	12
			1.3.2.2	Typical elements of international IP treaties	14
		1.3.3	Differen	at types of treaties	15
			1.3.3.1	Differentiation by membership (bilateral,	
				multilateral and plurilateral treaties)	15
			1.3.3.2	Differentiation by legal objectives	16
		1.3.4	Adminis	stration of IP treaties	17
	1.4	Majo	r IP conv	entions	18
		1.4.1	The Par	is and Berne Conventions	18
			1.4.1.1	Coverage and structural commonalities	18
			1.4.1.2	Minimum rights in the Paris Convention	19
			1.4.1.3		
				Convention	20
		1.4.2	Special a	agreements based on the Paris and Berne	
			Conven	_	21
			1.4.2.1	Special agreements in copyright	22
			1.4.2.2	Special agreements on industrial property rights	22

	1.4.3	TRIPS			24
		1.4.3.1	Backgrou	nd	24
		1.4.3.2	Structure	and contents	25
			1.4.3.2.1	Overview	25
			1.4.3.2.2	Part I of TRIPS: general provisions;	
				principles and objectives	26
			1.4.3.2.3	Substantive minimum requirements	26
			1.4.3.2.4	The three-step test	27
			1.4.3.2.5	Procedural measures and sanctions;	
				registration proceedings	28
			1.4.3.2.6	Dispute prevention and settlement; transitional arrangements; final	
				provisions	29
1.5			evelopment		31
				ensuing policies	31
	1.5.2		up activities		32
				nd recommendations	32
				O Development Agenda	34
	1.5.3			pments in the arena of international	
		trade la		D 1	35
		1.5.3.1	The Doha		35
	154	1.5.3.2	other fora	rade agreements; ACTA	36
	1.5.4	IPKS IN	otner fora		37
2 IP	in the	Europea	n legal fran	nework	39
		_	-	ns and institutions	39
			ome to Lisb		39
		Instituti			41
				onship with EFTA and EEA	43
			_	embership and successive enlargements	43
		2.1.3.2	•		43
2.2	Intell	ectual pr	operty right	s and the Basic Treaties	44
		_		goods and services	44
		2.2.1.1	Issue and	legal basis	44
		2.2.1.2	Early case	law: from Grundig to Deutsche	
			Grammop	hon	45
		2.2.1.3	Further de	evelopment of case law	47
			2.2.1.3.1	Trade mark law	48
			2.2.1.3.	1.1 Trade marks having the same	
				origin	48
				1.2 Repacking, rebranding, relabeling	49
			2.2.1.3.2	Copyright	50

			2.2.1.3.2.1 The notion of 'industrial or	
			commercial property'	50
			2.2.1.3.2.2 Distribution of copies v. other	
			forms of exploitation	50
			2.2.1.3.2.3 Disparities of substantive law	51
			2.2.1.3.3 Patent law	53
	2.2.2	Non-dis	crimination	54
2.3	Secon	ndary legi	slation on intellectual property	57
			struments	57
		2.3.1.1	Primary and secondary Community law	57
		2.3.1.2	Directives	58
			Regulations	59
		2.3.1.4	Enhanced cooperation	61
	2.3.2	Current	state of EU legislation on intellectual property:	
		overviev	v	62
		2.3.2.1	Trade mark law	62
		2.3.2.2	Industrial designs	63
		2.3.2.3	Copyright	63
		2.3.2.4	Patent law	65
		2.3.2.5	Further legislation in IP and adjacent areas	66
			2.3.2.5.1 Further unitary Community rights	66
			2.3.2.5.2 Competition law	66
			2.3.2.5.3 Enforcement	67
			2.3.2.5.4 Jurisdiction and applicable law	67
			of EU law	68
2.4			onventions and EU intellectual property law	70
			rship in international agreements	70
	2.4.2	Compet		70
			Previous situation: joint competence	70
			Changes under the TFEU	72
	2.4.3		e law addressing international obligations	73
			Compatibility of EU legislation with TRIPS	73
		2.4.3.2		75
2.5			and European intellectual property law	77
			opean Human Rights Convention	77
	2.5.2		Rights and Community law	79
		2.5.2.1	The European Communities and the ECHR	79
		2.5.2.2	The Charter of Fundamental Rights	80
	2.5.3	Case law		80
		2.5.3.1	ECtHR	80
		2.5.3.2	ECJ	82

3	Pat	ents			84				
	3.1	3.1 Introduction							
		3.1.1	ntroduction 1.1 Objectives and developments 1.2 Patent law in Europe						
		3.1.2	Patent la	w in Europe	86				
	3.2	Europ	ean pate	nts: structure and proceedings	90				
		3.2.1	Overview						
			3.2.1.1	Legal basis and structure	90				
			3.2.1.2	The European Patent Organisation	92				
			3.2.1.3		93				
			3.2.1.4	Workload, quality and international					
				cooperation	93				
		3.2.2		g procedure	97				
			3.2.2.1	Overview	97				
			3.2.2.2	Application requirements	98				
			3.2.2.3	Languages and translations	99				
			3.2.2.4	Examination of formal requirements and search					
				report	100				
			3.2.2.5	Publication of the patent application	101				
			3.2.2.6	Examination procedure and grant	101				
			3.2.2.7	Opposition and limitation procedure	102				
			3.2.2.8	Appeals; petition for review; referrals in order to					
				ensure a harmonised case law	103				
			3.2.2.9	National validation	104				
			3.2.2.10	Relationship with the PCT system	104				
				3.2.2.10.1 Euro-PCT applications	104				
				3.2.2.10.2 EPO acting as International Searching					
				Authority (ISA)	105				
	3.3		antive pat		106				
			Overvie		106				
				ble subject matter	107				
			Types of	-	109				
		3.3.4		ons for protection	111				
			3.3.4.1	Novelty	111				
				Inventive step	112				
				Industrial application	113				
		3.3.5	_	fprotection (A v. 1 (0 FPG)	114				
			3.3.5.1	Interpretation of claims (Article 69 EPC)	114				
			3.3.5.2	Prohibited acts	117				
		226	3.3.5.3	Limitations and exceptions	118				
		3.3.6		and patent applications as object of property;	121				
				of patents	121				
			3.3.6.1	Regulations in the EPC	121				

		3.3.6.2	Unitary patents	122		
		3.3.6.3	Duration	122		
3.4	Paten	ts relatin	g to specific fields of technology	123		
	3.4.1 The Biotechnology Directive					
		3.4.1.1	= -	123		
		3.4.1.2	Contents	125		
			3.4.1.2.1 Patentability	125		
			3.4.1.2.2 Scope of protection	126		
		3.4.1.3	Contentious issues and ethical concerns	128		
			3.4.1.3.1 Regular assessment	128		
			3.4.1.3.2 Case law	129		
			3.4.1.3.2.1 Animal suffering; animal varieties:			
			the Oncomouse case	129		
			3.4.1.3.2.2 Stem cell patenting	130		
			3.4.1.3.2.2.1 EPO: WARF (the Edinburgh			
			patent)	130		
			3.4.1.3.2.2.2 ECJ: the Brüstle judgement	131		
			3.4.1.3.2.3 Purpose-bound protection:			
			Monsanto	133		
			3.4.1.3.2.4 Essentially biological methods:			
			tomatoes and broccoli	135		
	3.4.2	Compu	Computer-implemented inventions			
		3.4.2.1	The issue	137		
		3.4.2.2	Granting practice and figures	140		
		3.4.2.3				
			and the rejected proposal for the EPC 2000	142		
3.5	Suppl	lementar	y protection certificates	144		
	3.5.1	History	and purpose	144		
	3.5.2	Mechan	uism	146		
	3.5.3	Case lav	v	148		
3.6	Towa	rds a uni	tary patent	149		
	3.6.1	First ph	ase of developments (2000–2009)	149		
		3.6.1.1	The EPC and European Patent Litigation			
			Agreement (EPLA)	149		
		3.6.1.2	Renewed efforts regarding the Community patent	150		
	3.6.2	Post-20	09 developments	151		
		3.6.2.1	Unitary patents	151		
		3.6.2.2	The common judiciary	153		
			3.6.2.2.1 The EEUPC and the ECJ opinion			
			1/09	153		
			3.6.2.2.2 The Unified Patent Court	155		

4	Tra	ide ma	rks			157	
	4.1	Intro	duction			157	
		4.1.1	Objectiv	es and developments		157	
				ark law in Europe		159	
			4.1.2.1	Legal bases and fundam	ental		
				principles		159	
				4.1.2.1.1 Unitary char	acter of Community trade		
				marks		159	
				4.1.2.1.2 Coexistence		161	
	4.2	Admi	nistratio	of the CTM system: pro	cedural issues	163	
	4.2.1 OHIM: mission and structure						
	4.2.2 The language regime						
		4.2.3	Registration proceedings				
			4.2.3.1	Regular proceedings at 0	OHIM	164	
			4.2.3.2	International registratio	n	166	
				4.2.3.2.1 The Madrid	system: agreement and		
				protocol		166	
				4.2.3.2.2 Provisions in		168	
	4.2.4 Administrative and judicial control						
	4.3			or protection		170	
		4.3.1	Signs of	which a trade mark may o	consist	170	
			4.3.1.1	Sign v. abstract concept		170	
				Graphical representation	n	171	
		4.3.2		grounds for refusal		173	
			4.3.2.1	Distinctiveness and desc	criptive character:		
				overview		173	
			4.3.2.2	Particular forms of signs		175	
				4.3.2.2.1 Compound		175	
				4.3.2.2.2 Colours per s	še	176	
				4.3.2.2.3 Slogans		177	
				4.3.2.2.4 Surnames		178	
				4.3.2.2.5 Trade marks			
					of the product (shape of		
				product mar		178	
				4.3.2.2.5.1 Overview		178	
				4.3.2.2.5.2 Distinctiv			
				character		178	
				4.3.2.2.5.3 Function	_	179	
			4.3.2.3	Acquired distinctiveness		182	
				4.3.2.3.1 The relevant		182	
					otaining only in part of the		
				Community		183	

			4.3.2.3.3 Trac	de marks which are not distinctive	
			anyv	where in the Community	184
		4.3.2.4	Other absolute	grounds for refusal	185
			4.3.2.4.1 Ove	rview	185
			4.3.2.4.2 Exar	nples	186
			4.3.2.4.2.1 'I	mmoral' and offensive marks	186
			4.3.2.4.2.2 D	Deceptive marks	187
			4.3.2.4.2.3 F	lags, official symbols, badges,	
			e	scutcheons etc.	189
	4.3.3		grounds for refus	sal	190
			Overview		190
		4.3.3.2	Unregistered rig	ghts of more than local	
			significance		191
		4.3.3.3	•	vell-known marks	192
		Collecti			194
4.4	_	e of rights			195
	4.4.1		s and infringeme		195
				cture of provisions	195
		4.4.1.2	Use as a mark		196
				ve use by the alleged infringer	196
				in the course of trade	196
				rivate use v. commercial use	196
			4.4.1.2.2.2 U		197
				in relation to goods and services	198
				Jse in relation to a business	198
				Jse in relation to the infringer's	
				oods or services only?	199
				affecting the trade mark functions	200
				Trade mark functions	200
			4.4.1.2.4.2 E		201
		4.4.1.3	•	and likelihood of confusion	207
				ntity of trade marks	207
				ndards for assessing likelihood of	
				fusion	208
				imilarity of marks; overall	
				ppreciation; impact of a mark's	
				listinctiveness	208
				imilarity of goods and services	209
				The relevant public (notion of the	0
				nverage consumer')	210
				ikelihood of confusion in cases of	
			C	omposite marks	210

		4.4.1.4	Extended	protection of marks having a reputation	211
			4.4.1.4.1	General concept, economic rationale	211
			4.4.1.4.2	Requirements for claiming reputation	212
			4.4.1.4.	2.1 The relevant criteria	212
			4.4.1.4.	2.2 Territorial elements	213
			4.4.1.4.3	Conditions and scope of protection	214
			4.4.1.4.	3.1 Protection against use for similar	
				goods	214
			4.4.1.4.	3.2 Necessity of a 'link'	215
			4.4.1.4.	3.3 Detriment to distinctive character	215
			4.4.1.4.	3.4 Detriment to reputation	217
			4.4.1.4.	3.5 Taking unfair advantage	217
			4.4.1.4.	3.6 Lack of due cause	218
	4.4.2	Limitati	ons of prote	ection	219
		4.4.2.1	'Fair use'		219
			4.4.2.1.1	Overview	219
			4.4.2.1.2	Use of one's name or address	220
			4.4.2.1.3	Use as an indication concerning	
				certain properties of the goods	221
			4.4.2.1.4	Use to indicate purpose	222
		4.4.2.2	Exhaustio	n	223
			4.4.2.2.1	Basic principles: regional exhaustion	223
			4.4.2.2.2	Acts conferring exhaustion	224
			4.4.2.2.3	Consent	225
			4.4.2.2.4	Burden of proof	225
			4.4.2.2.5	Right to oppose further	
				commercialisation	226
			4.4.2.2.	5.1 Repackaging, relabeling, rebranding	226
			4.4.2.2	5.2 Damage to reputation	228
		4.4.2.3	Acquiesce	nce	229
	4.4.3	The use	requiremen	ıt	230
		4.4.3.1			230
		4.4.3.2	'Genuiner		231
		4.4.3.3		se of CTMs: territorial extent	232
		4.4.3.4	Reasons fo	or non-use	233
4.5		of rights			234
		Overvie			234
		Revocat			234
	4.5.3	Invalida			236
		4.5.3.1		or invalidation	236
		4.5.3.2	_	f initial invalidity for certain absolute	
			grounds		236

			4.5.3.3	Bad faith	236
			4.5.3.4	Procedural aspects of invalidation	237
	4.6	Trade		s objects of property	238
5	Coj	yrigh	t		241
	5.1	Intro	duction		241
		5.1.1	History	and objectives	241
		5.1.2	Copyrig	ht law in Europe: overview	243
	5.2	Harm	onisation	n of national copyright laws	246
		5.2.1	Harmon	nisation strategy	246
			5.2.1.1	Internal market concerns	246
			5.2.1.2	Other economic and political concerns	247
			5.2.1.3	Copyright and culture	248
		5.2.2		sting copyright Directives	250
			5.2.2.1		
				as 91/250/EEC): Computer Programs	
				Directive	250
				5.2.2.1.1 Aim	250
				5.2.2.1.2 Scope	252
			5.2.2.2		
				lending right and on certain rights related to	
				copyright in the field of intellectual property	
				(originally published as Directive 92/100/EEC):	
				Rental and Lending Right Directive	254
				5.2.2.2.1 Aim	254
				5.2.2.2. Scope	255
			5.2.2.3		
				certain rules concerning copyright and rights	
				related to copyright applicable to satellite	
				broadcasting and cable retransmission: Satellite	
				and Cable Directive	257
				5.2.2.3.1 Aim	257
				5.2.2.3.2 Scope	258
			5.2.2.4	Directive 2006/116/EC on the term of protection	
			0.2.2.	of copyright and certain related rights (originally published as Directive 93/98/EEC): Term	
				Directive and Directive 2011/77/EU amending	
				Directive 2006/116/EC on the term of protection	
				of copyright and certain related rights	261
				5.2.2.4.1 Aim	261
				5.2.2.4.2 Scope	262

			5.2.2.4.3	Directive 2011////EU: prolongation	
				of the term of protection of performers	
				and producers of phonograms	264
		5.2.2.5	Directive 9	96/6/EC on the legal protection of	
			databases:	Database Directive	266
			5.2.2.5.1	Aim	266
			5.2.2.5.2	Scope	267
		5.2.2.6	Directive 2	2001/29/EC on the harmonisation of	
				pects of copyright and related rights in	
			the inform	nation society: Information Society	
			(InfoSoc)	Directive	270
			5.2.2.6.1	Aim	270
			5.2.2.6.2	Scope	270
		5.2.2.7	Directive 2	2001/84/EC on the resale right for the	
				the author of an original work of art:	
			Resale Rig	tht Directive	273
			5.2.2.7.1	Aim	273
			5.2.2.7.2	Scope	274
	5.2.3	'Better r	egulation' a	pproach: the Online-Music	
			•	.005/737/EC	276
	5.2.4	Possible	future dire	ctives	279
		5.2.4.1	Consolida	tion of existing Directives	279
		5.2.4.2	Orphan w	orks legislation	280
		5.2.4.3	Harmonis	ing the framework for collecting	
			societies		283
		5.2.4.4	Policy pap	ers	286
			5.2.4.4.1	Green Paper on 'Copyright in the	
				knowledge economy'	286
			5.2.4.4.2	Reflection Paper 'Creative content in a	
				single European market: Challenges	
				for the future'	288
			5.2.4.4.3	Communication 'A single market for	
				intellectual property rights'	288
5.3	Harm	onisation	by interpre	etation: the role of the ECJ	290
	5.3.1	General	trends		290
	5.3.2	Issues ac	ldressed		292
		5.3.2.1	Subject m	atter	292
		5.3.2.2	Condition	s of protection	293
		5.3.2.3	Ownershi	p of rights	294
		5.3.2.4	Exclusive	rights	295
			5.3.2.4.1	Reproduction right	295
			5.3.2.4.2	Distribution right	296

				5.3.2.4.3	Communication to the public	297
				5.3.2.4.4	Sui generis database right	300
			5.3.2.5 I	Exceptions	-	302
				5.3.2.5.1	Scope	302
				5.3.2.5.2	Adequate/equitable remuneration	305
				5.3.2.5.3	Three-step test	308
			5.3.2.6	Exhaustio	n	309
			5.3.2.7	Term of p	rotection	310
			5.3.2.8	Related ri	ghts	311
			5.3.2.9	Contracts		311
			5.3.2.10	Remedies		312
			5.3.2.11	Technolo	gical protection measures	312
			5.3.2.12	Territoria	lity	313
	5.4	Towa	ırds a Co	mmunity C	opyright?	315
		5.4.1	Shortco	mings of pi	ecemeal harmonisation	315
			-		me territoriality	317
		5.4.3	The Co	mmunity C	opyright as a solution?	319
_						
6					ights: plant varieties, geographical	222
			ns, indus duction	trial desigi	ns, semiconductor topographies	323
			varieties			323
	0.2				nal hagas	324
			_	ound and leg	•	324 326
		0.2.2	6.2.2.1		ne CPVR Regulation n requirements	326
					on and examination procedures	328
				Denomina	=	330
					nferred and limitations	331
			0.2.2.7	-	Prohibited acts	331
					Agricultural exception (farmers'	551
				0.2.2.1.2	privilege)	332
				62243	Other limitations: compulsory	332
				0.2.2.1.3	licenses	334
				62244	Exhaustion	335
			6225I	Ouration	Danadolon	335
		623		e with pater	nt law	336
	6.3			ndications	it iuw	338
	0.0	_	-	ound and leg	ral bases	338
		0.0.1	6.3.1.1		s and forms of protection	338
			6.3.1.2		n in the EU	339
		6.3.2			alation (No. 510/2006)	341
				Definition		341

		6.3.2.2	Procedure	•	342
			6.3.2.2.1	Simplified procedure	342
			6.3.2.2.2	Regular procedure: indications	
				relating to Member States	342
			6.3.2.2.3	Indications relating to non-EU States	343
		6.3.2.3	Specificati	on; monitoring	344
		6.3.2.4	Effects of	registration	345
		6.3.2.5	GIs and ge	eneric names	345
		6.3.2.6	GIs and tr	ade marks	347
			6.3.2.6.1	The legal provisions	347
			6.3.2.6.2	Case law	348
		6.3.2.7	Relationsh	nip with national protection systems	349
		6.3.2.8	GIs and p	rimary EU law	351
6.4	Indus	trial desig	gns		354
	6.4.1	Backgro	und and leg	gal bases	354
	6.4.2	Specific	industrial d	esign legislation	355
		6.4.2.1	Outlines o	of design legislation (Design Directive	
			and Comr	nunity Design Regulation)	355
		6.4.2.2	Specific fe	atures of the Community Design	
			Regulation	n	357
			6.4.2.2.1	Registered Community Designs	357
			6.4.2.2.2	Unregistered Community Designs	359
		6.4.2.3	Summary	options for protection under design	
			legislation		359
		6.4.2.4	Relevant l	egal issues	360
			6.4.2.4.1	Individual character: 'informed user'	
				and 'freedom of designer'	360
			6.4.2.4.	1.1 The 'informed user'	360
			6.4.2.4.	1.2 Freedom of the designer	360
			6.4.2.4.2	Disclosure and destruction of novelty	362
			6.4.2.4.3	Designs made in the course of	
				employments and other contracts	364
		6.4.2.5	The spare	parts debate	365
	6.4.3		_	ct appearances under copyright and	
		unfair co	ompetition l	law	367
		6.4.3.1	Copyright		367
			6.4.3.1.1	Notion and protection threshold for	
				works of applied art	367
			6.4.3.1.2	Substantive restrictions of copyright	
				protection (UK law)	369
		6.4.3.2		npetition law	371
			61221	Conoral concent	271

				6.4.3.2.2	Requirements for finding of unfair		
					conduct	37	
				6.4.3.2.3	Primary Community law	373	
	6.5	Semi	conductor topographies				
		6.5.1	Backgro	und and leg	al basis	374	
		6.5.2	Details			373	
7	IPE	le and	competi	tion law		378	
,			duction	tion iuw		378	
			oetition la	aw		379	
			EU and competition law				
			7.2.1.1	-		379 379	
			7.2.1.2	_	competition law in the EU	382	
		7.2.2	er Block Exemption Regulation				
				0.	k Exemption on R&D Agreements		
			(R&DB			384	
			7.2.2.1	TTBER		383	
			7.2.2.2	R&DBER		38'	
			7.2.2.3	Patent poo	ols and standardisation agreements	390	
		7.2.3	The IP a	and competi	ition law overlap	393	
			7.2.3.1	General		393	
			7.2.3.2	Article 10	1 TFEU: agreements and concerted		
				practices		394	
				7.2.3.2.1	Assignments and licensing agreements	394	
				7.2.3.2.2	In particular: the pharmaceutical		
					sector	390	
				7.2.3.2.3	In particular: collecting societies and		
					competition law	399	
				7.2.3.2.3	3.1 National dealings of collecting		
					societies	400	
					3.2 Europe-wide online music	402	
			7.2.3.3		2 TFEU: abuse of a dominant market		
				position	A1	403	
				7.2.3.3.1	Abuse of a dominant market position	40	
				50000	granted by an IPR	403	
				7.2.3.3.2	In particular: refusal to license IPRs	403	
					2.1 Magill	400	
					2.2 IMS Health	40′	
					2.3 Microsoft	408	
					2.4 Discussion Other constallations, the 'group dat'	409	
	72	D con-1	ating up		Other constellations: the 'green dot'	410 412	
	1.3	Regul	ating uni	air competi	uon	414	

		7.3.1	Backgro	ound		412
	7.3.2 Measures against unfair competition in the light of prin					
			Commu	ınity law		415
			7.3.2.1	Impedime	ents for free movement of goods	415
			7.3.2.2	The 'avera	nge consumer'	417
		7.3.3	Mislead		nparative advertising	419
			7.3.3.1	Contents	of the Directive: overview	419
			7.3.3.2	Case law ((comparative advertisement)	421
				7.3.3.2.1	The notion of 'comparison'	421
				7.3.3.2.2	Price comparisons	422
				7.3.3.2.3	'Generic' comparisons	423
				7.3.3.2.4	Protection of trade marks and other	
					signs	424
				7.3.3.2.	4.1 Trade marks	424
				7.3.3.2.	4.2 Other signs	426
		7.3.4	The Un	fair Comme	ercial Practices Directive (UCP)	427
8	Remedies in cases of infringement					434
			duction	0		434
		8.1.1	Infringe	ment, coun	terfeiting and piracy	434
	8.1.2 Legal developments				C 2 .	437
	8.2	Civil	<i>r</i> il remedies			
	8.2.1 Enforcement Directive 2004/48/EC				tive 2004/48/EC	440
			8.2.1.1	Overview		440
			8.2.1.2	Details		442
				8.2.1.2.1	General principles	442
				8.2.1.2.2	Procurement of evidence	442
				8.2.1.2.3	Right to information	444
				8.2.1.2.4	Injunctions	445
				8.2.1.2.5	Corrective measures	446
				8.2.1.2.6	Damages; conclusions	446
			8.2.1.3	ECJ case l	aw	447
		8.2.2	Enforci	ng IPRs on t	the internet	449
	8.2.2.1 Liab			Liability o	fISPs	449
				8.2.2.1.1	Regulation in the E-Commerce	
					Directive	449
				8.2.2.1.2	ECJ case law	453
				8.2.2.1.3	Monitoring and subsequent	
					developments	456
			8.2.2.2	Enforcem	ent of IPRs versus data protection	458
				8.2.2.2.1	Relevant legislation	458
				8.2.2.2.2	ECI case law	459

	8.3	Borde	er measures			
		8.3.1	Regulati	on 1383/2003	462	
			8.3.1.1	Background and relevant provisions	462	
			8.3.1.2	Goods in transit	464	
		8.3.2	Practical	effects	466	
	8.4	Crimi	inal sanct	ions	469	
		8.4.1	Introduc	ction	469	
		8.4.2	TRIPS		470	
		8.4.3	Propose	d Directive on criminal sanctions	472	
	8.5	The A	Anti-Cour	nterfeiting Trade Agreement (ACTA)	476	
		8.5.1	Backgro	und and political concerns	476	
		8.5.2	General	standards and civil remedies	476	
		8.5.3	Border r	neasures	478	
		8.5.4	ISP liabi	lity	479	
		8.5.5	Crimina	l sanctions	480	
9	Jur	isdicti	on and a _l	pplicable law	484	
9.1 Introduction					484	
	9.2 Jurisdiction				485	
	9.2.1 Scope of application					
		9.2.2	e and contents of the Brussels I Regulation:			
			overview	T .	486	
			9.2.2.1	Heads of jurisdiction	486	
			9.2.2.2	Recognition and enforcement	488	
			9.2.2.3	Obligation of competent courts to hear claims	488	
		9.2.3	Issues of	sues of particular relevance for intellectual property		
			matters		490	
			9.2.3.1	Article 5 (1): contractual matters	490	
			9.2.3.2	Article 5 (3): infringement jurisdiction	491	
				9.2.3.2.1 General remarks	491	
				9.2.3.2.2 Article 5 (3) as a basis for cross-border		
				litigation	492	
				9.2.3.2.2.1 General principles	492	
				9.2.3.2.2.2 Application of Article 5 (3) in case		
				of IP infringement on the internet	494	
				9.2.3.2.3 Negative declaratory actions	496	
			9.2.3.3	Article 6 (1): multiple defendants	497	
				9.2.3.3.1 Prerequisites; existence of a close		
				connection	497	
				9.2.3.3.2 ECJ case law	498	
			9.2.3.4	Exclusive jurisdiction: the limits of cross-border		
				litigation	500	

		9.2.3.4.1	General rule and exception: the		
			relationship between Article 2 and		
			Article 22 (4)	500	
		9.2.3.4.2	Invalidity as an incidental issue: GAT		
			v. LuK	502	
		9.2.3.4.3	Consequences	503	
		9.2.3.4.4	Reform proposals	504	
		9.2.3.4.5	Unregistered rights (copyright)	505	
	9.2.3.5	Torpedoe	s	507	
	9.2.3.6	Provisiona	al and protective measures	509	
	9.2.3.7	Specific re	gulations concerning IP litigation	511	
		9.2.3.7.1	Community trade marks and		
			Community designs	511	
		9.2.3.7.2	Patents	512	
		9.2.3.7.	2.1 The EPC and the Protocol on		
			Recognition	512	
		9.2.3.7.	2.2 The Unified Patent Court	513	
9.3 Appli	9.3 Applicable law				
9.3.1	9.3.1 Universal application of the Regulations				
9.3.2	9.3.2 The law applicable to contractual obligations: Rome				
	9.3.2.1	The basic	rule: freedom of choice	516	
	9.3.2.2	Determina	ation of the law applying in absence of		
		choice		517	
9.3.3	The law applicable to non-contractual obligations: Rome II				
	9.3.3.1	Lex protec	tionis as the basic rule	519	
	9.3.3.2	Scope of a	pplication	521	
			Article 15 Rome II	521	
		9.3.3.2.2	First (copyright) ownership	522	
	9.3.3.3	•	ommunity rights	524	
	9.3.3.4			525	
9.4 Ubiqu	itous infr	ingements:	towards an internationally harmonised		
appro	ach?			526	
	9.4.1 Challenges				
9.4.2	Initiativ	es and prop	osed solutions	528	
Recommende	d literatur	re		531	
Index					