EIPIN Team Report and Mock Trial Guidelines 2013

EIPIN CONCEPT

An EIPIN Congress consists of two conferences per academic year. The conferences are hosted by EIPIN member institutions on a rotating basis. This year the conferences are in:

- Maastricht University Faculty of Law, 30 January – 2 February 2013
- Strasbourg, CEIPI, 5 - 7 April 2013.

The EIPIN concept is built around active student participation throughout the Congress. Students are called upon to craft well-informed questions in order to spark an exchange of ideas following each EIPIN speaker. Students are further required to submit a report relating to a topic presented during the EIPIN Congress.

Given their central role, EIPIN student participants must commit to actively take part in all aspects of the EIPIN Congress. This commitment includes in-depth advance preparation for the conferences, attendance of each presentation throughout the Congress and active involvement in the EIPIN team requirements.

For an overview of past Congresses as well as respective topics and programs, please visit the EIPIN website (www.eipin.org).

EIPIN STUDENT PARTICIPATION

Teams

Each EIPIN institution chooses approximately 10 of its students to take part in the EIPIN Congress. Once the student participants have been chosen by their respective institution, the students are then divided into teams. Ideally, each team will have at least one student from each institution. Each team member is expected to contribute equally to all aspects of the team’s responsibilities.

Each team is assigned a number and charged with the completion of several assignments. Each team will be allocated a Congress topic/presentation and asked to prepare at least 4 questions/comments to initiate the discussion following the presentation. In addition, each team will be required to submit a report on a subject relating to one of the EIPIN Congress presentation topics. The teams are advised by Ph.D. students of the participating institutions.
First Conference

Assignment of Team Report Topics

For the first conference of the year, IPKM and CEIPI have selected ten topics from the 14th EIPIN Congress and randomly assigned the topics to the teams. The topics must be readapted by the team in coordination with the Team Advisor in order to reflect the team’s particular composition (home jurisdiction, area of expertise, etc.). Please note, the team report topic likely differs from the presentation topic for which the team is responsible for preparing questions.

The report topics will be communicated to partner institutions before the first conference. The partner institutions will inform the team members and advisors about team assignments and report topics.

Before arriving at the first conference, team members are expected both to have communicated with fellow team members and to have done research on their topic before the first team meeting in Maastricht.

The 2013 Maastricht University portion will include a Mock Trial, the text of which, along with mock trial instructions can be found at the end of these guidelines. Two of the team topics will be the role of plaintiff and defendant in the mock trial and the teams will have slightly different deadlines as noted below. Their final papers will be fully developed and argued briefs for their position taking into account the arguments made by their opponents during the oral arguments phase.

Role of Advisors

Each team has been allocated an EIPIN advisor who is a member of one of the EIPIN institutions.

The Advisor is in no way involved in the development and creation of the report as such. The Advisor can be consulted and can assist with the structure and plan of the report. She/he can also be consulted if the team raises specific questions on scientific, legal as well as practical issues dealt within the report.

The Advisor will follow the work on the report by correcting each submission made by the team(s), therefore advising the team(s) on possible improvements.

Date of Submissions

(a) Team Report topics to be communicated to partner institutions by December 22, 2012.

(b) 1st set of meetings between the team and the Advisor to be held during EIPIN in Maastricht, January 2013 to discuss, refine and develop Team Report. The Mock trial teams will meet and develop the skeleton brief (bullet points in preparation for oral arguments) and hand them in to Dalindyebo.shabalala@maastrichtuniversity.nl by 30th January 2013, 6pm CET.
(c) Report proposal/outline (abstract, table of contents, working bibliography) to be submitted to the Team Advisor by 20 February, 2013. The Mock trial teams will not have to produce such an outline or draft as their skeleton brief for the mock trial will have served as the abstract /outline.

(d) Team Advisor to give comments/feedback to team by 4 March, 2013. (Including for the Mock trial teams if they have not already done so)

(e) 1st Draft of Team Report to be submitted to the Team Advisor by 30 March 30, 2013, including for the Mock trial teams.

(f) 2nd set of meetings between the team and the advisor to be held during EIPIN in Strasbourg, April 2013.

(g) 2nd Draft of Team Report to be submitted to the Team Advisor by 30 April, 2013, including for the Mock Trial Teams.

(h) Team Advisor to give comments/feedback to team on 2nd Draft Report by 15 May, 2013.

(i) Final Team Report to be submitted to Team Advisor by 1 June 2013,

Format of the document

Team reports are papers having a length of 4,000 to 5,000 words. Reports should demonstrate a certain degree of ‘personal’ analysis and ‘team coherency’, as a result of team work (not five different small reports put into one). The team report must be the team’s original work.

Presentation

The typescript should not exceed the length specified. The first line of each new paragraph should be indented, except where it follows a heading. There should be no space between paragraphs unless you want a text break.

Every paper should contain a logical sequence of main sections, preceded by a heading and each of these headings can be divided into further sub-sections. Students should leave additional spacing above and below section headings and above and below indented quotes.

Mock Trial Briefs should follow proper WTO Format for briefs and submissions to panels. To the extent that these deviate from style and format points below, please follow WTO brief style and citation format.

Headings

Students should type all headings - chapter titles, main and sub-headings – with initial capital for the first word only. They should avoid more than three levels of sub-headings in any chapter.

Style
Dates

Dates should be written 18 August 1990 and decades should be the 1990s without an apostrophe.

Full points

Full points are not needed after headings (including table headings), sub-headings or figure captions, or after names and addresses printed below prefaces or in, for example, specimen letters.

Spelling

Spelling should be standardized to English rather than American forms, unless there is some risk of misunderstanding. Where a dictionary gives alternative spellings for some words please use the ‘–ize’ suffix where possible.

Numbers

Numbers in the text up to and including ten should be written out in full unless accompanied by a unit of measurement, for example 3 kg, 5 m or 2 per cent but two girls, etc. Numbers which begin sentences should be spelled out. Numbers over 10 should appear in figures, unless used in general terms - for instance, about a hundred people. Four-digit numbers should appear closed up (without a comma). Five or more digit numbers should appear with a space e.g. 23 000. Decimal points should appear as full stops on the line. Students should mark clearly the difference between capital O and zero and between lower-case l and figure 1 where necessary. ‘Billion’ is now more commonly used in its American meaning of a thousand million.

Quotations and extracts

These must be an exact reproduction of the original in both spelling and punctuation even if this conflicts with the style in the rest of the book. Single quotes are used for extracts in the text of less than 50 words in length and double quotes for quotes within quotes. For extracts exceeding 50 words in length material should be indented from the left margin, with space above and below and quotation marks should be omitted. Any notes or editorial comment within the extracts should appear in square brackets and any omissions should be indicated by 3 dots followed by a full point if it occurs at the end of a sentence.

References

References to sources must be provided as footnotes.

A bibliography listing all the sources cited should follow the report. References should be listed in alphabetical order and should contain as much of the following information as appropriate in this order:

1. Name of author
2. Title of article

3. Title of book, periodical, journal, thesis. Book titles should be preceded by the author’s or editor’s name where different from 1 above

4. Year of original and publication and of the version referred to

5. Volume or issue number

6. Place of publication

7. Publisher

8. Opening and closing page numbers (for chapters in edited volumes and journal articles)

A bibliography could be set out as follows (in conformance with the Oxford Standard for Citation of Legal Authorities):

**Case-law**

Decisions of national courts

*Page v Smith* [1996] AC 155 (HL)

*Corr v IBC Vehicles Ltd* [2008] UKHL 13, [2008] 1 AC 884

*Cass civ (1)* 21 January 2003, D 2003, 693

BGH NJW 1992, 1659

EU-jurisprudence

Case T-29/89 *Moritz v Commission* [1990] ECR II-787

Case C-176/03 *Commission v Council* [2005] ECR I-7879, paras 47-48

Case C-556/07 *Commission v France* [2009] OJ C102/8

Case C-31/10 *Minerva Kulturreisen* (Judgment of the Court, 9 December 2010)

European Court of Human Rights

*Simpson v UK* (1989) 64 DR 188

*Osman v UK* ECHR 1998/VIII 3124

*Balogh v Hungary* App no 47940/99 (ECHR, 20 July 2004)
Books


Chapters in edited books


Journal articles


Further information

For further or more detailed information, Team Advisers may wish to encourage the group members to consult the Oxford Standard for Citation Of Legal Authorities (OSCOLA), accessible under the following link:

[http://www.law.ox.ac.uk/publications/oscola.php](http://www.law.ox.ac.uk/publications/oscola.php)

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Libel

Please ensure that you do not make any defamatory or injurious statement about living persons, institutions or other organizations which could result in libel claims.

Publication of reports

After the final submission of the reports, the reports will be lastly reviewed by the EIPIN advisors. A selection will be finally made by the Board of Directors. The selected paper(s)
might be published in the EIPIN website and/or in mass media to be determined. This final decision is left at the discretion of the Board of Directors.

**Mock Trial Text and Instructions**

*From Heath/Sanders (eds.), Intellectual Property and Free Trade Agreements (2007 Hart Publishing)*

**Rules of Engagement**

1) Applicable law: WTO/TRIPS, but plaintiff and defendant may rely on (ie present to the court in writing) case law from any jurisdiction.

2) Rules of procedure: WTO, but the panellists must seek an opinion from the jury (ie the audience) before rendering judgment.

3) Both parties, plaintiff and defendant are to prepare their oral arguments beforehand. They must hand in a skeleton brief by January 30, 2013, 6pm CET to Dalindyebo Shabalala ([dalindyebo.shabalala@maastrichtuniversity.nl](mailto:dalindyebo.shabalala@maastrichtuniversity.nl)) - The skeleton is not meant to be a complete brief. It should outline/bulletpoint the arguments that you plan to make, the facts and case law you will cite for support for each argument, and the relief you seek. It is not necessary to recite the facts of the case except where necessary to support your arguments. All groups may use their opponents’ skeleton briefs to further revise and prepare their oral arguments. These will be distributed on January 30.

4) In the oral hearing, both sides shall present their case in opening statements very briefly within 10 minutes. Thereupon, the witnesses shall be heard.

Thereafter, both parties shall present their reasoned arguments for about 20 minutes each whereupon both sides shall have another 10 minutes to rebut arguments by the other side.

All members of the team should have an opportunity to speak during the presentation. The time can be divided up in whatever way each team feels plays to their strengths.

5) Finally, the panellists shall consider his verdict during the recess and pronounce judgment after having sought an opinion from the jury.

6) A verdict on the substantive legal questions shall be provided even if the court considers it has no jurisdiction.

The Case —‘The Free Trade Agreement between Futura and Utopia’
This case involves a dispute over the free trade agreement between ‘Futura’ and ‘Utopia’ of 5 September 2000. The Futura-Utopia Free Trade Agreement (FUFTA) contains a chapter (12) on intellectual property. In Article 1204 Futura and Utopia agree to the free circulation of trade marked goods. The wording of the provision can be found in the Annex.

Utopia is a developed nation and WTO member that has agreed to such bilateral exhaustion in order to stimulate development in neighbouring Futura, a former communist state. Futura has recently taken significant steps to move towards a free market economy and is a recent WTO member, but it must still be considered a least developed nation.

The above Article 1204 became necessary because Utopia otherwise follows a rule of national trade mark exhaustion, as was clarified by a ruling of the Utopian House of Gimmicks (the Supreme Court of Utopia) of 16 July 2003

(Chief Justice Thomas Morus presiding):

An exhaustion of trade mark rights in respect of products put on the market outside Utopia under that mark by the proprietor or with his consent is contrary to s 7(1) Utopian Trade Mark Act.

The case at issue concerned the parallel importation of so-called ‘Giggling Goggles’ (a futuristic kind of sunglasses with inbuilt communication skills) that were first marketed by the Utopian trade mark owner in neighbouring Blogdonistan. The goods were of identical quality to those marketed by the same trade mark owner in Utopia. Trade mark exhaustion rules in Futura are not as clear-cut. There are no decisions to rely upon, and the relevant section of the Trade Mark Act reads as follows:

‘The trade mark shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market under that trade mark by the proprietor or with his consent.’ (Sec 2)

‘Morgana’ is a neighbouring country to both Futura and Utopia. It exports 40 per cent of its goods to Utopia, but increasingly exports (15 per cent and growing) to the recently opened market in Futura. The goods exported are sold in each respective market at a price that corresponds to the level of development of each respective country.

Imports and sales of Morganan goods in Utopia are typically handled by subsidiaries or licensees of Morganan companies.

In Futura, the situation is rather different. Under former communist rule, all imports and legitimate sales into Futura had to be undertaken by Futuran licensees, or joint ventures consisting of a foreign (Morganan) and a Futuran partner. These joint ventures have been partly state-owned, but are now being privatized.

Morgana feels locked-out by the FUFTA Agreement, but is also worried about its significant economic interests in Utopia and Futura. It is particularly worried about the fact that a significant amount of cheap Futuran imports — Morganan or other goods—end up in its
prime Utopian market.

Morgana brings a complaint against Futura and Utopia before the WTO, of which it is a member, raising the following points:

1. Article 1204 of the FUFTA is not in compliance with the TRIPS agreement.

2. Should the above provision of the FUFTA comply with TRIPS, the most favoured nation principle under Art 4 TRIPS would require that the same treatment be given to Morganan (parallel) importers of trade marked goods first marketed in Morgana and subsequently exported to Utopia or Futura.

Futura and Utopia petition for the complaint to be dismissed. Reciprocal exhaustion requirements could not be interpreted as a ‘favour’. Futura further relies on its status as a least developed nation and counter-petitions that should the panel recommend that Morgana’s request be granted, Morgana should also be obliged to acknowledge exhaustion for goods first marketed in Futura or Utopia under the above conditions.

The WTO has established a panel and is willing to hear oral arguments from all parties.

Annex

Futura-Utopia Free Trade Agreement (FUFTA)

Chapter 12—Intellectual Property

Article 1201 Objective

1. The objective of this Chapter is to increase the benefits from trade and investment through the protection and enforcement of intellectual property rights.

2. ‘Intellectual property rights’ refers to copyright and related rights, rights in trade marks, geographical indications, industrial designs, patents, and layout designs (topographies) of integrated circuits, rights in plant varieties, and rights in undisclosed information, as defined and described in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

Article 1202 Observance of International Obligations

The Parties shall fully respect the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and any other multilateral agreement relating to intellectual property to which both are parties.

Article 1203 Measures to Prevent the Export of Goods that Infringe Copyright or Trade Marks
Each Party, on receipt of information or complaints, shall take measures to prevent the export of goods that infringe copyright or trade marks, in accordance with its laws, regulations, or policies.

**Article 1204 Exhaustion of Trade Mark Rights**

In respect of intra-parties trade, the Parties shall ensure the free movement of trade marked goods that have been put on the market in the territory of one of the Parties with the consent of the right owner or licensee that is entitled to the use of a trade mark in that territory on the basis of:

a. a registration in the local bureau of industrial property rights; or

b. a valid licensing agreement; or

c. international obligations.

**Article 1205 Cooperation on Enforcement**

The Parties shall cooperate with a view to eliminating trade in goods infringing intellectual property rights, subject to their respective laws, regulations, or policies. Such cooperation may include:

a. the notification of contact points for the enforcement of intellectual property rights;

b. the exchange, between respective agencies responsible for the enforcement of intellectual property rights, of information concerning the infringement of intellectual property rights;

c. policy dialogue on initiatives for the enforcement of intellectual property rights in multilateral and regional fora; and

d. such other activities and initiatives for the enforcement of intellectual property rights as may be mutually determined by the Parties.

**Article 1206 Other Cooperation**

The Parties, through their competent agencies, shall:

a. exchange information and material on programs pertaining to education in and awareness of intellectual property rights, and to commercialisation of intellectual property, to the extent permissible under their respective laws, regulations and policies; and

b. encourage and facilitate the development of contacts and cooperation between their respective government agencies, educational institutions, organisations and other entities concerning the protection and development of intellectual property rights with a view to:

i. improving and strengthening the intellectual property administrative systems in areas such
as patents examination and trademarks registration;

ii. stimulating the creation and development of intellectual property by persons of each Party, particularly individual inventors and creators as well as small to medium-sized enterprises (SMEs); and

iii. enhancing the capacity of and opportunity for the owners of intellectual property rights to obtain the maximum utilisation and commercial benefits from those rights.