

The Case for a Special Conflicts Rule in the European Union for Cross-Border Trade Secret Disputes (summary)

Onur Can SAATCIOGLU

Program-Specific Associate Professor, Graduate School of Law, Kyoto University

In modern-day private international law, trade secret infringements are usually regarded as having a tortious character. Specifically, under the relevant rules of the Rome II Regulation, the infringement can either be seen as an act of unfair competition exclusively affecting the interests of a specific competitor (as proposed by the majority of authors) or as an act affecting, or likely to affect, competitive relations or the collective interests of consumers. Drawing on critical literature accumulated in recent years, this paper aims to argue for a reform of the existing approach. Part I outlines the complex realities of trade secret disputes. Part II introduces the current conflict-of-laws rules under the Rome II Regulation, and Part III examines their suitability for addressing such disputes. This paper is not concerned with finding an ideal interpretation of the existing provisions. Instead, Part IV proposes guiding principles and offers a model conflicts rule in which those principles are embedded.