
Foreword

The principle of exhaustion is a well-established concept in the intellectual property laws of the member states of the World Trade Organization (WTO). By means of explicit legislative provisions or judicial precedents, most countries use the principle of exhaustion to limit the rights of intellectual property owners and to advance diverse public policy objectives. For example, some countries rely on this principle to regulate competition in the domestic marketplace and to enhance consumer welfare; other countries invoke the concept of exhaustion as a mechanism to promote trade and the free movement of goods. Typically, governments will adapt national laws on exhaustion to pursue some combination of these goals.

Today, however, there is still no international consensus concerning a uniform policy justification for the principle of exhaustion, nor is there any consensus about uniform rules to be adopted either for exhaustion in general or even for specific applications of this doctrine to patents, trademarks, copyrights, and related intellectual property regimes.

In particular, two diverging paradigms continue to influence opposing views about the exhaustion of intellectual property rights. One is the free trade paradigm—implemented under the General Agreement on Tariffs and Trade (GATT 1994) and the General Agreement on Trade in Services—which supports a system of international exhaustion. Another is the independence of intellectual property rights paradigm—embodied in the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works—which has been invoked to defend a system of national or regional exhaustion.

Contrasting views about these diverging paradigms made it impossible to reach a consensus on the issue of exhaustion during the multilateral trade negotiations that produced the Agreement on Trade Related Aspects of Intellectual Property Rights (“TRIPS Agreement”) in 1994. Hence, even though the language in Article 6 of the TRIPS Agreement expressly leaves members of the WTO free to determine their national policies on intellectual property exhaustion, existing national practices remain open to challenges and questions under GATT 1994. In the recent past, many of these challenges and questions have been addressed by national and international policy-makers, regulatory authorities, and the courts.

The contributors to this book address these issues in depth. Chapter by chapter, the authors explore and analyse the theoretical and normative framework supporting the principle of exhaustion. They discuss existing controversies in detail, with particular regard to the impact of different systems of exhaustion on international trade. To their credit, the authors also reach beyond the traditional—but still unresolved—areas of disputes, in order to consider applications of the principle of exhaustion to new fields of technology, such as self-replicating technologies, digital goods, and their distribution via the Internet. The end result is a provocative and informative work that instructs and challenges readers, whether experts or novices in this field. I congratulate the editors for

having compiled this comprehensive and valuable set of materials on such an important topic, the product of a team of stellar contributors.

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