**University Doctoral (PhD) Dissertation Abstract**

# A THEORETICAL AND PRACTICAL ASSESSMENT OF INFRINGEMENT AS A LEGAL INSTITUTION IN INDUSTRIAL PROPERTY LAW

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## I. RESEARCH TOPIC AND OBJECTIVES

Infringement of industrial property rights is not merely a legal abstraction. As a result of exploitation without the right holder's consent, creators suffer direct economic loss, the return on innovation investments is called into question, and the competitive balance of the market is disrupted. In the modern innovation-based economy, the intellectual property rights system is also one of the main safeguards for research and development investments – strong and effectively enforceable industrial property rights have a stimulating effect on both direct investors and the wider economic environment.

With the spread of global trade and digitalisation, the nature and location of infringing behaviour have changed radically. Infringements occurring on online platforms, in the metaverse and within content generated by artificial intelligence, raise doctrinal questions to which the traditional intellectual property legal framework does not always provide a satisfactory answer. Mapping out the concept of infringement, its constituent elements and legal consequences is therefore relevant not only in theory but also in terms of legislative policy – particularly in light of the transformation of the principle of territoriality, cross-border infringements and the launch of the Unified Patent Court (UPC) in 2023.

The subject of this thesis is the theoretical and practical examination of the legal institution of infringement in industrial property law: what factual elements constitute infringement across the various forms of protection, how the system of enforcement is structured in the Hungarian, European and – for comparative purposes – other selected foreign legal systems, and what systemic conclusions can be drawn regarding the effectiveness of the current regulations.

The researcher's personal interest stems from early professional experience at the Centre for Research Utilisation and Technology Transfer at the University of Debrecen, followed by the Department of Competition Law and Intellectual Property Rights at the Ministry of Justice, and the Supreme Court – where, as a legal entity, legislator and law enforcer, he had the opportunity to gain an understanding of the complexity of the field. Nearly a decade of teaching experience also provides practical insight that strengthens the empirical foundation of this research.

## RESEARCH QUESTIONS:

1. What factual elements underpin industrial property infringement across the various forms of protection?

2. How does the heterogeneity of the concept of infringement, its legal consequences and enforcement mechanisms vary across Member States within the EU?

3. What specific challenges do digital technologies – in particular AI, online platforms and global e-commerce – pose for the traditional toolkit used to detect, prove and enforce infringement?

4. To what extent do the structural complexity and unpredictable costs of industrial property infringement proceedings disproportionately affect small and medium-sized enterprises?

## BASIC HYPOTHESES:

**Hypothesis 1** *(hereinafter: H1):*

The heterogeneity at Member State level regarding the concept of industrial property infringement, its legal consequences and enforcement mechanisms, constitutes a structural barrier to effective action. Greater harmonisation within the European Union – particularly in the handling of digital and cross-border infringements – is a necessary condition for ensuring equivalent protection of rights holders.

**Hypothesis 2** *(hereinafter: H2):*

Digital technologies – particularly artificial intelligence, online platforms and global e-commerce – generate challenges that go beyond the traditional toolkit for detecting, proving and enforcing infringement, to which the European regulatory response (DSA, AI Act) is, from an industrial property rights perspective, partial and requires supplementation.

**Hypothesis 3** *(hereinafter: H3):*

The structural complexity and unpredictable costs of industrial property infringement proceedings place a disproportionately heavy burden on small and medium-sized enterprises (SMEs), which may result in a de facto loss of rights and have a negative impact on the willingness to innovate; Legislative intervention aimed at reducing this systemic inequality – particularly within the framework of the UPC and the unitary patent – is justified.

## II. STRUCTURE OF THE THESIS

The thesis is divided into six main chapters, which build logically upon one another, ranging from the systematic classification of the legal institution, through legal historical precedents and general issues of infringement, to the enforcement system, and then to the presentation of specific issues relating to individual forms of protection, finally arriving at a synthesising examination of hypotheses and proposals *de lege ferenda*.

### Chapter 1 –The research's place within the system of intellectual works

The first chapter establishes the theoretical framework of the research. It outlines the systematic relationships within intellectual property law, particularly the distinction between copyright and industrial property protection, and then defines the subject, relevance, methodology and hypotheses of the research. It highlights that the creation of industrial property protection is subject to registration with the state, that its protection is territorial in scope, and that its term of protection is limited – these characteristics justify a separate doctrinal examination distinct from copyright.

### Chapter 2 – The development of individual forms of industrial property protection and the emergence of infringement

The second chapter presents, from a legal-historical perspective, the development of the various forms of industrial property protection – patents, designs, industrial designs, trademarks and geographical indications, as well as plant variety protection – from a legal-historical perspective, whilst simultaneously exploring the emergence and development of the legal institution of infringement. A synthesis of the legal-historical context highlights that infringement, as an independent legal institution, can only arise where a prior exclusive right – protection – exists.

**Chapter 3 – General issues, risks, and the economic and sociological significance of usurpation**

Chapter 3 examines the legal-philosophical foundations of infringement and the justification of legal theories of protection, the economic impacts of infringement, and the dual role of technology. From this latter perspective, it is particularly important that AI, blockchain and online platforms can simultaneously serve as both tools for infringement and potential instruments for detecting infringement.

**Chapter 4 – The System of Enforcement**

The fourth chapter outlines the role of civil, criminal and administrative proceedings, the Unified Patent Court, and alternative dispute resolution mechanisms, examining how these various procedural avenues fit into the substantive legal framework of industrial property protection.

**Chapter 5 – Specific issues of infringement and an analysis of case law**

The fifth chapter forms the dogmatic and empirical focus of the thesis. It examines specific issues relating to infringement within a system organised by form of protection, covering patent, utility model, design, trade mark and geographical indication protection, as well as plant variety protection. Each sub-chapter presents the normative framework, Hungarian, EU and selected foreign case law, as well as a synthesis of relevant academic positions.

**Chapter 6 – Summary and Conclusions**

The sixth chapter provides a comprehensive summary of the research findings, revisits the hypotheses through hypothesis analysis, formulates *de lege ferenda* proposals, and, in its concluding remarks, places the results of the thesis within their scientific and social context.

## III. RESEARCH METHODOLOGY

Due to the nature of the subject matter under investigation and the specific characteristics of the discipline of jurisprudence, the methodological structure of the thesis is primarily based on a qualitative approach. The research focuses on dogmatic analysis, comparative law and the systematic examination of judicial practice, supplemented by the integration of findings from relevant social science and economic theory literature.

One of the starting points of the methodological concept was to explore the domestic literature as comprehensively as possible, in order to outline the contours of the Hungarian academic discourse on industrial property infringement in as much detail as possible. In this spirit, the thesis covers a broad spectrum, ranging from classic monographs and commentaries to current journal articles, conference proceedings and relevant analyses by WIPO, EUIPO, EPO and the WTO.

The thesis synthesises approximately five years of research activity into a coherent structure, drawing on both paper-based and digital sources. In addition to the domestic library collection, the research draws on sources made available during professional visits to certain Member States of the European Union, the United States and India. A key methodological pillar is the systematic analysis of domestic and foreign court rulings, as well as arbitral awards.

An important component of the research consists of insights crystallised during professional forums, conferences, round-table discussions, and exchanges with solicitors, barristers, judges and other experts. Experience gained through questionnaire and interview-based data collection using economic research methods also contributes to the research, although a detailed presentation of these will be provided outside the scope of this thesis.

The period under review covers the most significant developments in EU legislation – in particular the entry into force of the DSA and the AI Act, the launch of the UPC in June 2023, the introduction of protection for craft and industrial geographical indications under Regulation 2023/2411, and the 2025/2026 trilogue on the NGT Regulation – right up to the completion of the manuscript on 3 April 2026.

## IV. CONCLUSIONS

### Examination of Hypothesis H1 and conclusions

Hypothesis H1 is confirmed. The doctrinal material uncovered during the research, the case law of the CJEU and the empirical data consistently support the view that the minimum rules of Directive 2004/48/EC generate an identifiable and proven risk of infringement in the field of cross-border and digital infringements. The Directive does not harmonise substantive legal concepts, does not define what constitutes infringement in relation to the various forms of protection, and does not standardise the application of the principle of equivalence – hence the significant divergence that remains in Member States' regulations.

Full unification is not a realistic objective due to constraints on sovereignty. The aim of the research is precisely to identify those areas where targeted EU-level intervention could be effective, the harmonisation of the legal definition of infringement by form of protection (primarily in relation to patents and trademarks), harmonising the application of the principle of equivalence in the case law of Member States, strengthening the framework for cross-border proceedings within the UPC, and codifying the analogous applicability of the industrial property provisions of the DSA and the AI Act.

### Examination of Hypothesis H2 and conclusions

Hypothesis H2 is confirmed, with the clarification that the extent and content of partiality vary depending on the form of protection. The most serious gaps are the lack of a conceptual classification for industrial property rights infringements in AI-generated content, the lack of industrial property rights specificity in the *notice-and-action* mechanism, and the fragmentation at Member State level in the procedural assessment of technological evidence.

The DSA and the AI Act are not sufficient in themselves to effectively address IPR infringement, but – particularly in cases where copyright and IPR infringements occur in parallel – they can provide indirect protection if Member States' courts apply them consciously. According to the EUIPO's 2025 annual data, the record number (327,735) of EU trade mark and design applications clearly indicates that, in parallel with the expansion of the digital market, the demand for protection is also growing – and enforcement capacity should follow suit.

**Examination of Hypothesis H3 and conclusions**

Hypothesis H3 can be confirmed, albeit with some caveats. Data from the UPC's first two years show that the system is potentially more favourable to SMEs than previous national procedures, but the level of litigation costs – particularly following the 2026 increase (the basic fee rose from EUR 11,000 to EUR 14,600, and the value-based fee for disputes under EUR 5 million has risen from EUR 32,000 to EUR 44,600) – continue to pose a structural barrier for rights holders with limited resources.

Only ~10% of EU SMEs have industrial property protection (compared to ~50% of large enterprises), which is not only a disadvantage for the individual but also a macroeconomic loss; according to the EUIPO's comprehensive analysis of January 2025, employees in intellectual property-intensive sectors generate 41% higher added value and enjoy a 22% wage premium. The risk of de facto loss of rights is particularly present where the deadline for the interim measure has already expired, the evidence is expert-intensive, or the case is cross-border, necessitating parallel proceedings.

**The systemic interrelationship of the hypotheses**

The three hypotheses do not stand in isolation but form a mutually reinforcing logical system. The regulatory fragmentation identified in H1 also complicates the management of the digital challenges described in H2 (because national laws respond differently to the frameworks provided by the AI Act and the DSA), and exacerbates the SME disadvantages described in H3 (because in the event of a cross-border infringement, SMEs must take action not in one but in several Member States). The evidence for all three therefore points in the same direction. Targeted, area-specific intervention at EU level – in particular clarifying the applicability of the UPC framework and the DSA/AI Act to industrial property rights – is a structural prerequisite for effective action against industrial property rights infringement.

**Proposals *de lege ferenda***

- Harmonisation of the legal definition of infringement by form of protection (primarily in relation to patents and trademarks) at EU directive level;
- Harmonising the application of the principle of equivalence in the case law of Member States through guidance from the CJEU;
- Strengthening the framework for cross-border proceedings and the system of legal remedies within the UPC;
- Codification of the analogous applicability of the provisions of the DSA and the AI Act relating to industrial property rights;
- Specialised SME legal aid programmes within the EUIPO, expanding the 2025 SME Fund to partially finance procedural costs;
- Introduction of a simplified, summary procedure at the UPC for patent cases below a specified value, similar to small claims procedures in copyright law;
- Mandatory offer of WIPO ADR and mediation in industrial property infringement cases prior to the commencement of proceedings – particularly in cross-border cases.

## V. MAIN FINDINGS OF THE THESIS

### *Thesis 1 – The dogmatic foundation and conceptual framework of industrial property infringement*

The legal institution of industrial property infringement can be defined as a breach of an absolute, negative-content property right. Where there is no exclusive right – protection – there is no infringement either. The thesis establishes that infringement must be treated as an independent dogmatic category, the conceptual elements of which differ according to the form of protection, and in the examination of which both substantive and procedural dimensions are indispensable.

The basic prerequisite for infringement is that the exclusive right of the patent holder – or other holder of an industrial property right – exists, and that someone utilises it without the right holder's authorisation or beyond the scope of that authorisation. The legal institution therefore not only sanctions infringing conduct but is also the material manifestation of an exclusive right with *erga omnes* effect. For patent infringement to be established, all the elements of the claim must be present – the absence of even a single element precludes a finding of infringement. Where exploitation is secured by a licence agreement, infringement may also take the form of a breach of a relative legal relationship.

The application of the principle of equivalence is of particular importance in the context of patents. If the infringing solution differs from the features of the claim not literally but merely functionally, infringement may still be established if the solution essentially performs the same function in the same way and achieves the same result (the three-part test). This flexible interpretation is essential for the effective protection of the right holder, whilst at the same time the legal certainty of third parties must also be taken into account – this dual objective is also reflected in the interpretative protocol to Article 69 of the ECT.

***Thesis 2 – The historical roots of infringement and the parallel development of forms of protection***

An analysis of legal history confirms that forms of industrial property protection and the legal institution of infringement developed in parallel. With the emergence of the claim to exclusivity, the need to sanction unauthorised use inevitably arose as well. The arc stretching from the Venetian decree of 1474 to the provisions of Directive 2004/48/EC shows that the sanctioning of infringement stems from the dual objective of protecting market competition and encouraging innovation.

Legal history research highlights that the development of various forms of protection was closely intertwined with economic development and the Industrial Revolution. The Venetian decree of 1474 established the first institutionalised form of patent protection: it granted a ten-year exclusive right to the inventors of new and useful devices, whilst also being the first to codify sanctions prohibiting unauthorised manufacture. The English Statute of Monopolies of 1624 is a direct precursor to today's legal understanding of inventions.

In Hungary, the first patent law came into force in 1895, followed by Act II of 1969, and finally replaced by the currently applicable Act XXXIII of 1995 *(Szt.).* Trademark law and design protection have also followed their own distinct paths in legal history. The TRIPS Agreement (1994) and the Paris Convention (PC, 1883) laid down the international minimum standards for protection against infringement, creating the overarching framework within which EU harmonisation and Member State laws fit.

The legal-historical synthesis of this thesis demonstrates that the industrial property protection system has developed not linearly but spirally. Technological leaps – from the steam engine through the Industrial Revolution to the digital transformation – have each time redefined the concept of infringement and the means of redress. This observation from legal history forms the methodological basis for the thesis's prediction that the AI revolution will inevitably trigger a new normative response.

***Thesis 3 – The limitations of minimum harmonisation under Directive 2004/48/EC and fragmentation among Member States***

The minimum harmonisation nature of Directive 2004/48/EC generates a structural risk of infringement in cross-border and digital infringement cases. The significant differences that remain between Member States' regulations – particularly in the definition of the legal concept of infringement, the application of the principle of equivalence and the system of sanctions – have become real obstacles to effective action.

The Directive merely stipulates that Member States must provide effective, proportionate and dissuasive civil law remedies, but does not harmonise substantive law concepts. It does not define what constitutes infringement in relation to the various forms of protection, does not define the precise scope of the infringement of exclusive rights, and does not standardise the conditions for the application of the principle of equivalence. As a result of these shortcomings, the legal systems of the Member States provide structurally different levels of protection: the interpretation of the principle of equivalence applies different standards in Germany, the Netherlands and Hungary.

The bifurcated system – which Hungary adopted from the German model – is also a factor contributing to fragmentation. Infringement proceedings and invalidity proceedings are separated, with the Hungarian Intellectual Property Office (HIPO) and the Budapest Metropolitan Court acting in parallel but with differing jurisdictions. This four-tier procedural system (HIPO → Budapest Metropolitan Court → Budapest Regional Court of Appeal → Supreme Court) extends the average duration of invalidation proceedings to 17 months at first instance, which generates significant uncertainty regarding the proceedings as a whole.

The evaluation process conducted by the Council of the EU in 2024 confirmed that, in the areas covered by the Directive – particularly regarding the problematic handling of AI-generated content from an intellectual property perspective – the inadequacy of uniform minimum rules creates a demonstrable risk of infringement. The thesis concludes from this that intervention at EU level should not take the form of complete harmonisation, but rather of targeted harmonisation addressing the most critical gaps.

***Thesis 4 – The case law of the CJEU and the impact of the UPC on the framework for industrial property infringement***

An examination of the CJEU's case law reveals that the Court adapts the patent system to the objectives of the single market and competition law not by curtailing intellectual property rights, but by functionally reprogramming them. The BSH judgment and the UPC Fujifilm v Kodak case confirm that the territorial monopoly remains in place, but the concentration of infringement litigation is increasing.

In the case of Roche Nederland BV and Others v Primus and Goldenberg, the CJEU held that, upon grant, a European patent splits into parallel national sub-patents, the infringement of which is always governed by the independent national law of the relevant state. In the case of GAT v LuK, the Court ruled that the validity of a foreign patent may be determined exclusively by the courts of the state in which it is registered. These two landmark decisions established the cornerstones of the principle of territoriality.

In the case of BSH Hausgeräte GmbH v Electrolux AB, the CJEU brought about a revolutionary change. It confirmed that holders of European patents may consolidate their patent infringement claims relating to several EU Member States and non-EU Member States before a single court ("long-arm" jurisdiction). The UPC case of Fujifilm v Kodak also confirmed that the concentration of infringement litigation is increasing: the principle of territoriality remains, but the effectiveness of legal protection is enhanced by the shift towards a one-stop-shop procedure.

The AstraZeneca judgment and Huawei Technologies v ZTE together confirm that the CJEU interprets the concept of industrial property infringement within a framework interwoven with competition law. In the case of standard-essential patents (SEPs), the requirement for negotiations under FRAND terms and the competition law-constrained interpretation of interim measures (Phoenix Contact GmbH v HARTING) demonstrate that the law of infringement and competition law are mutually interdependent within the EU legal system.

***Thesis 5 – The challenges of digitalisation and artificial intelligence within the conceptual framework of industrial property infringement***

Digital technologies – in particular AI, online platforms and the metaverse – create conceptual gaps in the traditional framework of infringement that neither the DSA nor the AI Act fully address in the context of intellectual property law. In the case of trademark infringement occurring in content generated by AI systems, the traditional conceptual framework (as to whether the infringer is the developer, the operator or the user) cannot be applied without modification.

In the L'Oréal v. eBay case, the CJEU held that online platform operators may be held liable if they fail to remove infringing content following a report. However, the *notice-and-takedown* mechanism is based on copyright logic. Intellectual property infringement – particularly due to the complex technical content of patent claims and the need to apply the doctrine of equivalence – cannot be addressed by automated removal systems. Trademark infringement in AI-generated content (e.g. Hermes v. Rothschild, Getty Images v. Stability AI) raises new factual issues.

The DSA (2022/2065) primarily regulates platforms' content moderation obligations, whilst the AI Act (2024/1689) focuses on the transparency of AI systems – both instruments primarily address the issue from a copyright perspective, and do not contain any explicit provisions from an industrial property rights perspective. The thesis concludes that the transparency obligations under the AI Act (in particular the disclosure of training datasets for general-purpose AI models) may provide indirect protection for intellectual property rights holders, but do not in themselves establish a clear legal basis for liability for infringement.

The dual role of technology deserves particular attention. Blockchain-based proof of origin enables the authenticity of protected subject-matter to be verified at every point in the supply chain. AI-based infringement detection tools (e.g. the EUIPO's TMview and DesignView automated search systems) can speed up the identification of infringements. 3D printing enables home production, which makes both the prevention and the proof of patent infringement more difficult. Taken together, these three developments demonstrate that the technological and legal dimensions of combating industrial property infringement are inextricably intertwined.

***Thesis 6 – The structural procedural asymmetry between the Unified Patent Court and SMEs***

Based on data from the UPC's first two years (2023–2025), it can be concluded that SMEs are actively making use of the SME-friendly aspects of the Unified Patent Court – the one-stop-shop procedure, the 40% reduction in litigation costs, and the reduced renewal fees for unitary patents – are being actively utilised by SMEs (with a 35.5% participation rate among EU SMEs in the unitary patent system). At the same time, the basic procedural and value-based fees increased from January 2026 constitute a structural barrier, justifying targeted legislative measures.

In the EU, only ~10% of SMEs hold some form of industrial property protection, compared to ~50% of large enterprises. The EUIPO's comprehensive analysis of January 2025 confirms that in intellectual property-intensive sectors, employees generate 41% higher added value and enjoy a 22% wage premium. Industrial property protection is therefore a macroeconomic factor, not merely a matter for individual rights holders. The exclusion or self-selection of SMEs from industrial property infringement proceedings therefore represents an external loss to the innovation system as a whole.

Interim measures are a critical tool for effective action against infringement. The six-month deadline from the start of the infringement and the sixty-day deadline from the date of discovery are de jure neutral, but impose a de facto differential burden on market participants: large organisations have permanent monitoring capacity, whilst smaller rights holders may only become aware of the infringement months later. In patent infringement proceedings, the costs of evidence – particularly the series of expert opinions required to interpret the technical content and apply the principle of equivalence – represent an unpredictable financial risk for SMEs.

The thesis highlights that procedural uncertainty and unpredictable costs combined deter claimants with limited financial resources from bringing legal proceedings. The increased UPC fees applicable from January 2026 (basic procedural fee: from EUR 11,000 to EUR 14,600; value-based fee for disputes under EUR 5 million: from EUR 32,000 to EUR 44,600) will further restrict SMEs' access to justice and increase the risk of de facto loss of rights. This generates a measurable external loss in terms of willingness to innovate, which requires a targeted legislative response.

***Thesis 7 – The systemic interrelationship of the three hypotheses and the synthesis of scientific findings***

The three hypotheses examined form a mutually reinforcing system. Regulatory fragmentation (H1), digital challenges (H2) and SME procedural asymmetry (H3) are interrelated. An effective solution therefore requires complex, EU-level, sector-specific intervention based on the three pillars of conceptual harmonisation, digital enforcement and legal aid for SMEs.

The regulatory fragmentation identified in H1 directly reinforces the problems identified in hypotheses H2 and H3. Member States' differing concepts of infringement and the divergent application of the principle of equivalence prevent infringements occurring in AI-generated content from being assessed uniformly across the EU; and the burden of parallel proceedings in Member States disproportionately affects SMEs. This systemic correlation is one of the thesis's key academic contributions.

The thesis's de lege ferenda proposals identify four strategic directions. First, the harmonisation at EU directive level of the legal concept of infringement across different forms of protection, particularly in the context of patents and trademarks. Second, the codification of the analogous applicability of the industrial property provisions of the DSA and the AI Act. Third, fine-tuning the UPC's rules of procedure to make them SME-friendly, in particular by introducing summary proceedings for cases below a specified value. Finally, expanding the EUIPO SME Fund to partially finance procedural costs, and making WIPO ADR mandatory in cross-border cases.

As a concluding thesis of this dissertation, it can be stated that the effective functioning of the legal institution of industrial property infringement in the European Union protects not only the private interests of rights holders but also the integrity of the social innovation incentive system as a whole. Addressing regulatory, technological and procedural challenges cannot be postponed. The competitiveness of the knowledge-based economy and the integrity of the internal market both require deeper conceptual harmonisation, the expansion of the toolkit for digital enforcement, and the reduction of structural procedural inequalities.

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## List of publications related to the dissertation

Articles, studies (9)

1. **Szilágyi, G.**: A bifurkáció jogintézménye, a magyar szabadalmi jog rendszerében.
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   Level of HAS Committee on Legal and Political Sciences: D

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In: Aktualni problemi kolifikacii civilnavo zakonodavszva. Ed.: Jurij Bosickij, Kiivskij Universitet Prava, Kiev, 10-21, 2017. ISBN: 9786177363469

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**Publications in periodicals level „B": 2, related to the dissertation: 1.**
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