Contents

Tai	ble of Cases	xiii
		xxi
Table of Legislation List of Contributors		
	t of Abbreviations	xxvii
1313	Dundersons Historia on Historia Harris Const.	AAIA
	I THE EUROPEANIZATION OF INTELLECTUAL PROPERTY LAW	
	Intellectual Property as a Case Study in Europeanization:	
	Methodological Themes and Context	3
	A. Introduction	3
	B. International Cooperation in the Field of IP Law	6
	C. The Making of European IP Law	9
	D. The Impact of European IP Law on Member States	19
2	An Overview of European Harmonization Measures in	
9	Intellectual Property Law	25
	A. Introduction	26
	B. Patents	26
	C. Trade Marks	30
	D. Designs	31
	E. Plant Variety Rights	32
	F. Copyright and Related Rights	32
	G. Selected Horizontal Measures	34
	H. Selected Adjectival Measures	34
	I. Conclusions	35
	II HARMONIZATION MODELS AND APPROACHES	
3.	The Europeanization of Patent Law: Towards a	
	Competitive Model	39
1	A. Introduction	39
]	B. Comparing the Reasons for Harmonization in IP	
	Law and General Private Law	40
	C. How Should Harmonization be Pursued?	43
]	D. Will Parties Choose the Unitary Patent? On Convergence	
	through Choice	49
]	E. Conclusions	54

x Contents

4. Is Harmonization a Good Thing? The Case of the	
Copyright Acquis	57
A. Introduction	57
B. The Harmonization of Copyright and	
Related Rights in the EU	58
C. The Pros and Cons of Harmonization	64
D. Territoriality in European Copyright	68
E. The Way Forward: Towards Unification of	
EU Copyright Law	71
5. The Europeanization of Trade Mark Law	75
A. Introduction	75
B. The Characteristics of EU Trade Mark	
Harmonization	77
C. The Development of European Principles	91
D. Conclusion	99
nested themically Content	
III THE IMPACT OF GENERAL EU LAW	
6. The Impact of General EU Law on Industrial	
Property Law	103
A. The Ages of Community Law	103
B. A Thought Experiment at CERN	105
C. A Trial Run for the Experimental Technique	106
D. Trade Marks	108
E. Patents	111
F. Copyright	113
G. In Retrospect	115
H. A Popular Analogy	116
7. The Balancing Impact of General EU Law on European	
Intellectual Property Jurisprudence	121
A. The Impact of General EU Law on Intellectual Property	122
B. An Overview of the CJEU Case Law on IP	122
C. The Role of the CJEU in Applying General EU Law and in	
Interpreting Secondary IP Law	124
D. Non-discrimination	128
E. Preservation of National Property	130
F. Balancing IP with Economic Freedoms of the Treaty	132
G. Free Movement and IP	133
H. Undistorted Competition and IP	136
I. Conclusion Samuel and Industrial and Industria	142

IV THE IMPACT OF CONSTITUTIONAL RIGHTS AND VALUES

8.	European Fundamental Rights and Intellectual Property	145
	A. Introduction	145
	B. The European Human Rights System	147
	C. Fundamental Rights and IP Legislation	153
	D. Fundamental Rights and the Application of IP Law	156
	E. Conclusion	162
9.	Rhetoric and Reality: The Impact of Constitutional and Fundamental Rights on Intellectual Property Law, as Revealed in the World of Peer-to-Peer File Sharing	165
	A. The Framework of Fundamental and Human Rights B. Fundamental and Human Rights in Action—The	165
	Case of Peer-to-Peer (P2P) File Sharing	170
	C. Conclusion	180
	V EUROPEAN AND NATIONAL COURTS	
0.	The Relationship between European and National Courts	
	in Intellectual Property Law	185
	A. Relationships between Courts Below and Appeal	
	Courts in General	185
	B. Relationships between National Courts of Different	
	European Countries	188
	C. Relationships between the European Patent Office	
	and National Courts	192
	D. Relationships between National Courts and the	
	Court of Justice of the European Union	196
1.	Towards a Unified Patent Court in Europe	199
	A. Will the Unified Patent Court Soon Become a Reality? B. Is the Situation with Regard to Patent Litigation in	199
	Europe Unsatisfactory?	202
	C. The Unified Patent Court: Structure and Jurisdiction	209
	D. Which Challenges will the Unified Patent Court Face?	212
	E. Conclusion	216
2.	The Future of European Intellectual Property Law Courts: Intellectual Property and the European	
	Judicial Architecture	217
		217
	A. Starting Point: EU Judicial Architecture and Intellectual	217
	Property Now	217

Contents

B. Two Options for Handling Trade Marks C. Patents	218 221
D. Conclusion	222
VI TOWARDS A EUROPEAN LEGAL METHODO	LOGY?
13. A Constitutionalized Doctrine of Precedent and the Marleasing Principle as Bases for a European Legal Methodology	227
A. Introduction	227
B. The Nature and Role of a European Legal Methodology	230
C. Lessons from European Patent Law- and Decision-Making	233 240
D. Towards a European Legal Methodology? E. Conclusion	252
14. Concluding Remarks: Postmodernism and Beyond	255
A. Postmodernism in European Intellectual Property Law	255
B. Models of Harmonization	256
C. The Benefits and Costs of Harmonization	260
D. The Institutional Design of EU Courts	262
E. Intellectual Property as an Embedded Part of the Legal System	264
F. Building Blocks for a European Methodology	266
G. Beyond Postmodernism	267
Index	269