

Roya Ghafele, Charles Dennergy, “Patent licensing in the shadow of the Directive on the Enforcement of Intellectual Property Rights”, *Journal of Intellectual Property Law & Practice*, Volume 13, Issue 8, August 2018, Pages 633–643

With reference to dynamic game theory, the paper discusses the effects of automatic injunctions granted by a Court ex-post on the ex-ante negotiation of patent licensing. By relying on Nash bargaining theory, the paper finds that a regime, whereby injunctive relief is granted nearly automatically, is likely to bring the licensor an arbitrary remedy as an injunction is not linked to the economic value of the patent. By consequence, it leads to licensing negotiations that depend primarily on the financial distress of either party to the case, and thus the nuisance of the dispute. This inconsistency is not pronounced in damage awards as damages can be linked to the value of the patent. Rather than abolishing the discretionary usage of injunctions, the paper hence recommends to increase damage awards in Europe and promote further IP valuation guidelines as a way to assess the economic value of damage awards.