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***LIMITS ON CROSS-BORDER JURISDICTION OF THE COURT  
WITH REGARD TO DEFENDANTS NOT DOMICILED IN A  
BRUSSELS CONVENTION COUNTRY***

*AN EURO-AMERICAN LAWYERS GROUP BRIEFING ARTICLE*

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The Dutch court does not have unlimited jurisdiction to impose cross-border injunctions. According to established jurisprudence the court may not impose a cross-border injunction if its jurisdiction is based on wrongful act and the defendant is domiciled in a country which is a party to the Brussels or Lugano Convention. However, whether this rule also applies if the defendant is domiciled outside of the countries which are a party to the Brussels Convention, is unclear.

It can be deduced from the judgment of 19 March 2004 of the Supreme Court in the Philips/Postech case that if the court has jurisdiction, it also has jurisdiction to make cross-border orders. The case was about patents, in which one of the issues was whether the Dutch court has (international) jurisdiction to adjudicate the provisions requested in preliminary relief proceedings against defendants based in Taiwan and Switzerland with regard to provisions which are in part of a cross-border nature.

The Supreme Court stipulated that if the Dutch court has jurisdiction on the basis of any rule of (common) international jurisdiction law to adjudicate a claim relating to the infringement of a right acquired under foreign law, it can, in principle, when so petitioned impose an injunction in respect of actions abroad. This also applies in preliminary relief proceedings and regardless of the grounds on which the Dutch court has based its international jurisdiction.

In the judgment of the District Court of The Hague of 31 August 2005 there was an American plaintiff and an Indian defendant. The issue was whether the Dutch court has the jurisdiction to make a cross-border declaratory judgment. The District Court held that it did not. There is no analogy with Philips/Postech, as the rule formulated in that judgment regarding the possibility of making cross-border provisions relates to situations in which *it has already been assumed* that there is international jurisdiction, while the issue in this case is precisely *whether* such jurisdiction can be assumed.

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