



PP12/09

**EU Commission Green Paper COM (2009) 175 final, of 21.04.2009
Review of Council Regulation 44/2001 (Brussels Regulation) - section 4, Industrial Property**

Question 4 in the green paper, following section 4, asks whether there are shortcomings in the current system of patent litigation in the EU that should be addressed in the context of Regulation 44/2001.

Comment

Arrangements for patent litigation within the EU are far from perfect. The main problems arise from the potential need to prosecute similar cases based on the same European patent or equivalent national patents in several jurisdictions; the possibility of conflicting decisions in those jurisdictions; different procedures and requirements, e.g., concerning evidence, in different jurisdictions; inexperienced judiciary in some jurisdictions; complexity and delay. However, little can be done to alleviate these problems by revision of the Brussels Regulation.

The way to improve patent litigation within the EU (and beyond it) is to establish an effective European Patent Court as part of a unified jurisdictional system for European and (eventual) Community patents. The appropriate legal provisions and system for this are currently under intensive discussion by Council working parties and the advice of the European Court of Justice has been sought. Until the prospects for and the outcome of this work becomes clear, it would be premature to adjust the Brussels Regulation to have greater impact on patent litigation.

As regards the issues highlighted in section 4 of the green paper and the accompanying report from the Commission (COM(2009) 174 final), our members have in the past been affected by "torpedo" tactics of the type described in the report, particularly from actions in Belgium and Italy, but such problems no longer seem common. (We note incidentally that the study that helped to underpin the report was conducted several years ago.) We agree with the green paper that the problems concerning torpedoes, such as they are at present, should be dealt with in the context of the unified litigation system and no modification of the Regulation should be necessary.

As regards the consolidation of proceedings against several infringers in a group acting with a coordinated policy and the associated problem of bringing actions in several jurisdictions, the suggested rules for selecting a single jurisdiction would not be acceptable. Indeed, the green paper itself points out formidable difficulties with them. They ignore the problem that rules in the individual jurisdictions, e.g., on scope of claims or what constitutes infringement, are far from harmonised. Moreover, it would not be appropriate to give priority to the court asked for positive relief as opposed to negative declaratory relief, which can be of just as great commercial importance.

Again, such problems should be resolved in the framework of the unified jurisdictional system. Indeed, the preliminary draft rules of procedure of the unified court make provision for consolidated action against a plurality of defendants "provided that the claims against them are sufficiently related to justify a common decision". These provisions could be developed if necessary.

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We agree that communication and interaction between courts seized in parallel proceedings should be strengthened as much as possible. This should be done without modifying the Regulation.

Thus, in conclusion, we urge that no changes specific to patent litigation, or indeed specific to other industrial/intellectual property litigation, should be made at present to the Brussels Regulation.

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The IP Federation (formerly TMPDF), represents the views of UK industry in both IPR policy and practice matters within the EU, the UK and internationally. Its membership comprises the innovative and influential companies listed on its website at www.ipfederation.com

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