

オランダの裁判所による知財侵害に対する国境を超えた差止命令 (クロスボーダー・インジャンクション) ― 欧州連合司法裁判所(2012 年 7 月 12 日)

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オランダの裁判所による知財侵害に対する国境を超えた差止命令(クロスポーダー・インジャンクション) 欧州連合司法裁判所 (2012 年 7 月 12 日)

欧州連合司法裁判所(「CJEU」) は 2012 年 7 月 12 日、Solvay 社と Honeywell 社と間で争われていたオランダでの知財侵害事件においてクロスポーダーの差止命令を認めるか否かという点について決定を下した(case C-616/10)。

背景

Solvay 社は、「HFC-245 fa」という製品に係る欧州特許の権利者であり、Honeywell 社のグループ会社であるオランダの会社 1 社とベルギーの会社 2 社は、特許保護されている「HFC-245 fa」と同一の製品を販売していた¹。そのため Solvay 社は、ハーグ地方裁判所においてそれらの会社に特許侵害訴訟を提起し、本案訴訟の決定が下されるまでの期間についてクロスボーダーの仮差止命令が下されるよう求めた。ハーグ地方裁判所は、この点に関連する「民事および商事事件の裁判管轄権および判決の承認ならびに執行に関する欧州委員会規則(44/2001)」(「委員会規則」)の第6条(1)、第22条(2)、第31条の解釈、すなわち暫定的な救済手続きと本案訴訟の両方においてクロスボーダーの差止命令を下す権限を同裁判所が有しているか否かという問題を CJEU に付託した。

矛盾する判決 - 委員会規則第6条(1)

CJEU は、委員会規則第6条(1)の趣旨は、「複数の別々の裁判において矛盾する判決が下されることを避けるため、被告が複数のうちの1人である場合、請求内容の緊密な関連性ゆえ併せて裁判することが得策である場合に限り、それらのいずれかの被告がドミサイルを有する国の裁判所において訴えられることができる」という内容であると述べた。さらに、国内裁判所において提起された複数の請求が関連性を有しているか、又、それらが別々の裁判で審理された場合に矛盾する判決が下される可能性はあるかという問題は、国内裁判所が決定することであり、そのような決定においては、事件に関連するあらゆる必要な要素を検討しなければならないとも述べている。しかし、矛盾した判決が下されるリスクがあるとみなされるためには、単にその紛争の最終結果が相違するというだけでは不十分であり、そのような相違が事実上および法律上同一の状況において発生することも要件となると述べた。そして、同一の状況が存在するか否かの判断については、次の通りとした:

- (a) 被告が異なっており、且つ、異なる加盟国でそれらの被告により行われたとされる侵害行為が同一でない場合は、同一の事実上の状況が存在すると推定することはできない
- (b) 各加盟国で付与されている欧州特許に関して異なる加盟国の複数の裁判所において侵害訴訟が提起されており、そのような訴訟がそれら各国で行われたとされる侵害行為についてその各加盟国にドミサイルを有する被告に対して提起されている場合は、同一の法律上の状況が存在すると推定することはできない

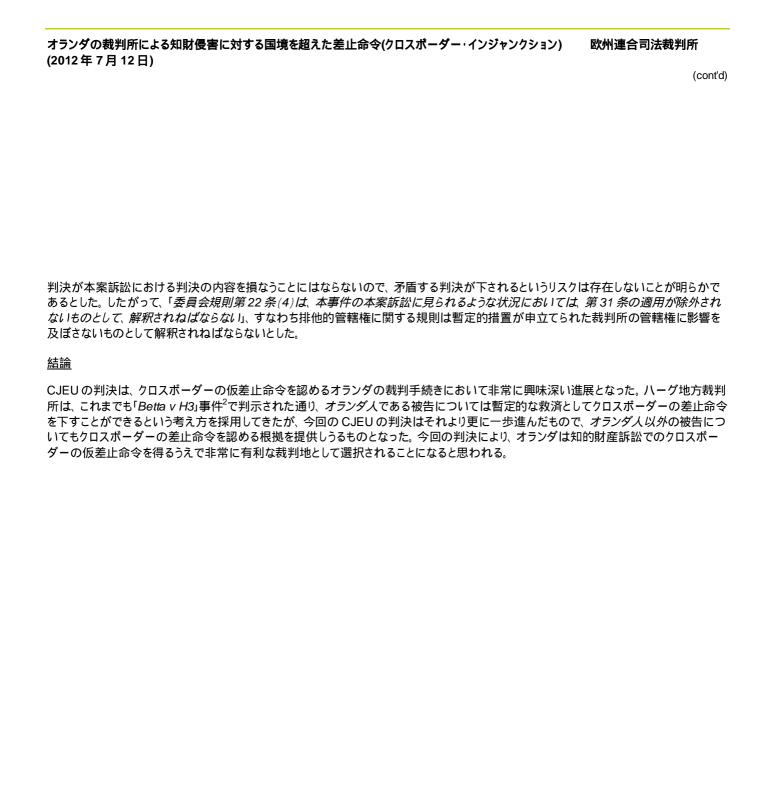
CJEUは、複数の被告が1欧州特許の同一の国の部分の権利を同一の商品に関連して侵害した場合において、その欧州特許の権利者がそれらの被告をそれぞれ異なる国の裁判所で提訴せねばならない場合には矛盾する判決が下されるリスクがあるとした。

仮差止命令 - 委員会規則第22条(4)および第31条

ハーグ地方裁判所は、知的財産権の寄託または登録の出願がなされている(又はそうみなされる)加盟国の国内裁判所が排他的裁判管轄権を有するという第22条の規則は、本事件のような状況においては、たとえ他の加盟国が当該事件の実体について裁判管轄権を有していても、暫定的な救済措置の申立てはどの加盟国の裁判所においても申し立てることができる(委員会規則第31条)という条項の適用を除外するものとして解釈されるべきかどうかについて、CJEUの助言を求めた。

CJEUは、「GAT v Luc 事件 (C-4/03)」において示された通り、排他的裁判管轄権に関する上述の規則は、その特許が無効であるという抗弁が侵害訴訟において行われたか否かに関わらず、特許の有効性に係る手続きに関連するものであり、暫定的救済を求める訴訟の提起を受けた裁判所は、特許の有効性に関する最終決定を下さないものの、本案訴訟を担当する管轄裁判所がその点についてどのような決定を下すか査定するので、その結果、その裁判所は、当該特許が本案訴訟の裁判所によって無効と決定される合理的な可能性がある場合は、申し立てられている暫定的救済を認めないとすると述べた。そして、そのような状況では、暫定的救済について下された

¹ 具体的には、Solvay 社は、Honeywell Flourine Products Europe BV と Honeywell Europe NV が欧州全域において、又、Honeywell Belgium NV が北欧および中欧において、特許権者のみに排他的権利が授けられている行為を行ったことについて訴訟を提起していた。



² ハーグ地方裁判所判事による判示 IEF7716 「Betta v H3」事件

THE ADMISSIBILITY OF CROSS-BORDER INJUNCTIONS IN INTELLECTUAL PROPERTY CASES IN THE NETHERLANDS — EUROPEAN COURT OF JUSTICE OF 12 JULY 2012

On 12 July 2012, the European Court of Justice ("CJEU") rendered a judgment between Solvay and Honeywell relating to the admissibility of cross-border injunctions in Intellectual Property cases in the Netherlands (case C-616/10).

Introduction

Solvay is the proprietor of a European patent protecting, in essence, a product called HFC-245 fa. Solvay found out that one Dutch and two Belgium entities of the Honeywell group were marketing a product called HFC-245 fa, which is identical to the product covered by the patent³. In this respect, Solvay instituted legal action against said Honeywell entities before the District Court of The Hague for patent infringement claiming a preliminary injunction with cross-border effect for the duration of the proceedings on the merits. In view of the cross-border preliminary injunction requested by Solvay, the District Court of The Hague referred questions to the CJEU concerning the interpretation of, inter alia, articles 6(1), 22(4) and 31 Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "Regulation"). In other words, the District Court referred questions to the CJEU seeking guidance regarding its jurisdiction to grant a cross-border injunction in both interim relief proceedings and proceedings on the merits.

Irreconcilable judgments - article 6(1) Regulation

The CJEU, in essence, observes that article 6(1) of the Regulation provides, in order to avoid irreconcilable judgments resulting from separate proceedings, that a defendant may be sued, where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together. Furthermore, according to CJEU it is for the national court to assess whether there is a connection between the different claims instituted before said national court and to assess whether a risk of irreconcilable judgments exists if those claims were determined separately. In this regard, the national court must take into account all the necessary factors in the case. The CJEU, however, ruled that in order for judgments to be regarded as at risk of being an irreconcilable divergence, it is not sufficient that there will be a divergence in the outcome of the dispute, but that divergence must also arise in the same situation of fact and law. With regard to the assessment of the existence of the same situation, the CJEU has ruled:

- (a) that the existence of the same factual situation cannot be inferred in the event that the defendants are different and the infringements they are accused of, committed in different Member States, are not the same
- (b) that the same situation of law cannot be inferred in the event that infringement proceedings are brought before a number of courts in different Member States regarding a European patent granted in each of those Member States and those actions are brought against defendants domiciled in those Member States in respect of acts allegedly committed in their territory

On the basis of the aforementioned, the CJEU considerers that a situation of irreconcilable judgments resulting from separate proceedings in different Member States can occur in proceedings pending before a court of one of those Member States, in which defendants are each separately accused of committing an infringement of the same national part of a European patent which is in force in yet another Member State by virtue of their performance of reserved actions with regard to the same product. It is for the referring court to assess whether such a risk exists, taking into account all the relevant information of the case.

Preliminary injunction - articles 22(4) and 31 Regulation

The CJEU, briefly, observes that the District Court of The Hague seeks guidance to ascertain whether or not the rule that national courts of the Member State, in which the deposit or registration of an intellectual property right has been (deemed to) applied for, have exclusive jurisdiction in proceedings (article 22(4) Regulation), must be interpreted as precluding, in circumstances such as those at issue, that an application for provisional measures may be made to the courts of a Member State. Even if another Member State has jurisdiction as to the substance of the matter (article 31 Regulation).

The CJEU considered that it, in essence, already follows from the *GAT v Luc* case (C-4/03) that said rule of exclusive jurisdiction relates to proceedings regarding the validity of a patent, regardless of the fact whether the invalidity of said patent

Specifically, Solvay accuses Honeywell Flourine Products Europe BV and Honeywell Europe NV of performing the reserved actions in the whole of Europe and Honeywell Belgium NV of performing the reserved actions in Northern and Central Europe.

THE ADMISSIBILITY OF CROSS-BORDER INJUNCTIONS IN INTELLECTUAL PROPERTY CASES IN THE NETHERLANDS — EUROPEAN COURT OF JUSTICE OF 12 JULY 2012

(cont'd)

has been invoked by way of defence against an infringement claim. The CJEU considers it to be relevant that the court before which the interim proceedings have been brought, does not make a final judgment on the validity of the patent invoked but makes an assessment as to how the competent court in the proceedings on the merits would rule in that regard, as a result of which the court refuses to adopt the requested provisional measure sought if it considers that there is a reasonable, nonnegligible possibility that the patent invoked would be declared invalid by said competent court. The CJEU considers that, in those circumstances, it is apparent that there is no risk of conflicting judgments, since the provisional judgment taken by the court before which the interim proceedings have been brought, will not in any way prejudice the judgment to be taken on the substance by said competent court. Subsequently, the CJEU ruled that "Article 22(4) of Regulation No 44/2001 must be interpreted as not precluding, in circumstances such as those at issue in the main proceedings, the application of Article 31 of that regulation", i.e. the exclusive jurisdiction rule comprising that national courts of the Member State in which the deposit or registration of an intellectual property right has been (deemed to) applied for, does not affect jurisdiction of the court before a provisional measure is sought.

Conclusion

The judgment of the CJEU is an interesting development with regard to the Dutch practice of granting preliminary injunctions having cross-border effect. The District Court of The Hague already accepted in the *Bettacare v H3* case⁴ that there is room for cross-border injunctions in interim relief cases as regards *Dutch* defendants. The present decision of the CJEU, however, may go one step further and may even provide basis for the acceptance of granting cross-border injunctions in interim relief proceedings as regards *non-Dutch* defendants. Such development makes the Netherlands an outstanding choice of forum to obtain interim cross-border relief in cases regarding intellectual property rights.

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² Provisions Judge of the District Court of The Hague 21 September 2006, IEF 7716 (*Bettacare v H3*).

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