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PMCA refers question on pan-European infringement jurisdiction to CJEU

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Introduction

The Patent and Market Court of Appeal (PMCA) has decided to ask the Court of Justice of the European Union (CJEU) to clarify whether infringement falls within the exclusive jurisdiction of the courts of the country where the patent is registered, if and when the validity of the at-issue patent is contentious.⁽¹⁾ The CJEU's answer will determine whether claimants have an avenue for enforcing all national parts of a European patent before the courts of the country where the defendant is domiciled, regardless of validity having to be litigated before the courts of the countries where the patent is designated.

Facts

A German company brought proceedings before the Patent and Market Court (PMC) against a Swedish company for infringement of 10 national designations of a European patent.

The defendant objected, among other things, that:

- all national parts of the patent were invalid; and
- the infringement claims were to be rejected accordingly.

The defendant also objected that the Swedish courts lacked jurisdiction over the infringement case with respect to all national parts of the European patent other than the Swedish parts.

The claimant disputed the preliminary objection and argued that infringement is not covered by the exclusive jurisdiction vested in the courts of the country of registration under article 24(4) of the EU Brussels Ia Regulation. This article provides that proceedings concerning validity, irrespective of whether the issue is raised by way of an action or as a defence, fall within the exclusive jurisdiction of the courts in question.

The claimant also argued that a provision of Swedish law had the effect that validity never becomes contentious in Swedish infringement proceedings. Further, the claimant argued that article 24(4) does not cover non-EU patents. It followed, according to the claimant, that the Turkish and UK designations asserted before the Swedish court could not be subject to the exclusive jurisdiction of any other court under the EU Brussels Ia Regulation.

The PMC decided to decline jurisdiction over the case insofar all designations of the European patent except the Swedish were concerned. The claimant appealed.

Decision

The PMCA found that the questions before it were not sufficiently clear. It decided to stay the proceedings and refer three questions to the CJEU:

- The first question asked was essentially whether article 24(4) of the EU Brussels Ia Regulation covers infringement proceedings when validity is contested as a defence.
- The second question considered the significance of domestic procedural rules under which a defendant that wishes to rely on invalidity as defence to infringement must sue the patentee for revocation.
- The third question contemplated whether article 24(4) extends to third country rights.

Comment

The CJEU will have to decide whether infringement can be pursued before the courts of the defendant's domicile regardless of the validity of the patent having to be adjudicated elsewhere. In other words, the question is whether infringement is divisible from the validity. The answer will be greatly significant not only for the current patent litigation landscape but also in the unitary patent system as the Unitary Patent Court will base its international jurisdiction on the EU Brussels Ia Regulation and the Lugano Convention 2007.

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Endnotes

(1) PMCA, PMÖ 671-21.

