

Art 16(4) of the Brussels Convention: exclusive jurisdiction in relation to patents

Case C-4/03 Gesellschaft für Antriebstechnik mbH & Co. KG v Lamellen und Kupplungsbau Beteiligungs KG (13th July 2006) concerned a reference from the Oberlandesgericht Düsseldorf (Germany) to the ECJ for a preliminary ruling on the interpretation of Article 16(4) of the Brussels Convention.

The Oberlandesgericht (Higher Regional Court) Düsseldorf sought, in essence, to ascertain the scope of the exclusive jurisdiction provided for in Article 16(4) of the Convention in relation to patents. It asked whether that rule concerns all proceedings concerned with the registration or validity of a patent, irrespective of whether the question is raised by way of an action or a plea in objection, or whether its application is limited solely to those cases in which the question of a patent's registration or validity is raised by way of an action.

The ECJ adjudged that:

- To allow a court seised of an action for infringement or for a declaration that there has been no infringement to establish, indirectly, the invalidity of the patent at issue would undermine the binding nature of the rule of jurisdiction laid down in Article 16(4) of the Convention.
- While the parties cannot rely on Article 16(4) of the Convention, the claimant would be able, simply by the way it formulates its claims, to circumvent the mandatory nature of the rule of jurisdiction laid down in that article.
- The possibility which this offers of circumventing Article 16(4) of the Convention would have the effect of multiplying the heads of jurisdiction and would be liable to undermine the predictability of the rules of jurisdiction laid down by the Convention, and consequently to undermine the principle of legal certainty, which is the basis of the Convention (see Case C-256/00 *Besix* [2002] ECR I-1699, paragraphs 24 to 26, Case C-281/02 *Owusu* [2005] ECR I-1383, paragraph 41, and Case C-539/03 *Roche Nederland and Others* [2006] ECR I-0000, paragraph 37).

- To allow, within the scheme of the Convention, decisions in which courts other than those of a State in which a particular patent is issued rule indirectly on the validity of that patent would also multiply the risk of conflicting decisions which the Convention seeks specifically to avoid (see, to that effect, Case C-406/92 *Tatry* [1994] ECR I-5439, paragraph 52, and *Besix* , cited above, paragraph 27).

On those grounds, the ECJ ruled that **Article 16(4) of the Brussels Convention is to be interpreted as meaning that the rule of exclusive jurisdiction laid down therein concerns all proceedings relating to the registration or validity of a patent, irrespective of whether the issue is raised by way of an action or a plea in objection.**

See here for the full judgment.