

A welcome comment on ECJ's "Berliner Verkehrsbetriebe" ruling

Last Friday the Spanish magazine *La Ley-Unión Europea* published a comment on ECJ case C- 144/10 by Professor Rafael Arenas (Universidad Autónoma, Barcelona). Prof. Arenas provides some welcome, useful keys on the understanding of the relationship between ECJ rulings in cases C- 04/03, *GAT*, and C-144/10 *BVG*; he also takes into account the reference for a preliminary ruling from the Supreme Court of the United Kingdom (C-54/11) in the same case, still pending before the ECJ. A little reminder: five years ago, in *GAT*, the ECJ established that art. 16(4) of the Brussels Convention applies to any proceedings on the validity of a patent , even if this validity is discussed by way of a plea in objection. On May, 12 2011, the ECJ issued a ruling on C-144/10, *BVG v. JPMorgan*, a case in which a contractual claim was contested by the defendant -a company-, on the basis that the agreement was not valid because the decisions of the society's organs, which had led to the conclusion of the contract, were null and void. The defendant tried to avoid the London jurisdiction, arguing that the only competent courts were the German ones since the defendant was a German company, and one of the issues under discussion was the validity of decisions of its organs. According to the defendant, article 22(2) of the Regulation applies although the doubts on the validity of the company's decisions was just a preliminary question. Apparently, the ECJ's ruling in *GAT* supports the defendant's arguments. The ECJ established, however, that in the case *BVG v. JPMorgan* article 22(2) of Regulation 44/2001 does not apply. The ECJ maintains that this decision does not contradict his previous ruling in case 4/03, *GAT*; but it is obvious that the compatibility of both judgments requires some explanation.

That is why we recommend Prof. Arenas's comment.