

ECJ Rules on Separate Proceedings and Interim Relief

The European Court of Justice (Third Chamber) delivered its judgment in *Solvay v. Honeywell* on July 12 (Case C 616/10).

The facts of the case were the following:

12 On 6 March 2009, Solvay, the proprietor of European patent EP 0 858 440, brought an action in the Rechtbank 's-Gravenhage for infringement of the national parts of that patent, as in force in Denmark, Ireland, Greece, Luxembourg, Austria, Portugal, Finland, Sweden, Liechtenstein and Switzerland, against the Honeywell companies for marketing a product HFC-245 fa, manufactured by Honeywell International Inc. and identical to the product covered by that patent.

13 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.

14 In the course of its action for infringement, on 9 December 2009 Solvay also lodged an interim claim against the Honeywell companies, seeking provisional relief in the form of a cross-border prohibition against infringement until a decision had been made in the main proceedings.

15 In the interim proceedings, the Honeywell companies raised the defence of invalidity of the national parts of the patent concerned without, however, having brought or even declared their intention of bringing proceedings for the annulment of the national parts of that patent, and without contesting the competence of the Dutch court to hear both the main proceedings and the interim proceedings.

The national court wondered, inter alia, whether this was a case where there was a risk of irreconcilable judgments in the meaning of Article 6 of the Regulation, and whether

Article 22(4) of [Regulation No 44/2001] [is] applicable in proceedings seeking provisional relief on the basis of a foreign patent (such as a provisional cross-border prohibition against infringement), if the defendant argues by way of defence that the patent invoked is invalid, taking into account that the court in that case does not make a final decision on the validity of the patent invoked but makes an assessment as to how the court having jurisdiction under Article 22(4) of [that] Regulation would rule in that regard, and that the application for interim relief in the form of a prohibition against infringement shall be refused if, in the opinion of the court, a reasonable, non-negligible possibility exists that the patent invoked would be declared invalid by the competent court?

The Court answered:

1. Article 6(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, must be interpreted as meaning that a situation where two or more companies established in different Member States, in proceedings pending before a court of one of those Member States, 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, is capable of leading to ‘irreconcilable judgments’ resulting from separate proceedings as referred to in that provision. It is for the referring court to assess whether such a risk exists, taking into account all the relevant information in the file.

2. 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.