

# ECJ Rules on Lis Pendens and Submission to Jurisdiction

On February 27th, 2014, the Court of Justice of the EU delivered its ruling in *Cartier Parfums Lunettes v. Ziegler* (case 1/13).

The issue before the court was whether the lis pendens rule in the Brussels I Regulation also applies when the jurisdiction of the court first seized was founded in a submission to its jurisdiction.

The court held that it does.

*38 It follows that the system established by Regulation No 44/2001, as is clear from Articles 24 and 27 thereof, was devised in order to avoid prolonging the length of time for which proceedings were stayed by the court second seised, when, in reality, the jurisdiction of the court first seised may no longer be challenged, as set out in paragraph 36 above.*

*39 Such a risk does not arise where, as in the case in the main proceedings, the court first seised has not declined jurisdiction of its own motion and none of the parties has contested its jurisdiction prior to or up to the time when a position is adopted which is regarded under national procedural law as the first defence.*

*40 In the second place, as regards the purpose itself of Regulation No 44/2001, it must be recalled that one of the aims of that regulation, as is clear from recital 15 in the preamble thereto, is to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given where a number of courts have jurisdiction to hear the same dispute. It is for that purpose that the European Union legislature intended to put in place a mechanism which is clear and effective in order to resolve situations of lis pendens. It follows that, in order to achieve those aims, Article 27 of Regulation No 44/2001 must be interpreted broadly (*Overseas Union Insurance and Others*, paragraph 16).*

*41 It must be stated that an interpretation of Article 27(2) of that regulation, according to which, in order to establish the jurisdiction of the court first seised within the meaning of that provision, it is necessary that that court has*

*impliedly or expressly accepted jurisdiction by a judgment which has become final would, by increasing the risk of parallel proceedings, deprive the rules intended to resolve situations of lis pendens, laid down by that regulation, of all their effectiveness.*

*42 Furthermore, as is clear from the Jenard Report on the Brussels Convention (OJ 1979 C 59, p. 1) and the case-law of the Court on Article 21 thereof, which corresponds to Article 27 of Regulation No 44/2001, the aim of the rule on lis pendens is also to avoid negative conflicts of jurisdiction. That rule was introduced so that the parties would not have to institute new proceedings if, for example, the court first seised of the matter were to decline jurisdiction (see Overseas Union Insurance and Others, paragraph 22).*

*43 Where the court first seised has not declined jurisdiction of its own motion and no objection of lack of jurisdiction has been raised before it, the fact that the court second seised declines jurisdiction cannot result in a negative conflict of jurisdiction since the jurisdiction of the court first seised can no longer be contested.*

**Ruling:**

***Article 27(2) 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, except in the situation where the court second seised has exclusive jurisdiction by virtue of that regulation, the jurisdiction of the court first seised must be regarded as being established, within the meaning of that provision, if that court has not declined jurisdiction of its own motion and none of the parties has contested its jurisdiction prior to or up to the time at which a position is adopted which is regarded in national procedural law as being the first defence on the substance submitted before that court.***