India to Join Hague Conference to Protect a Married Woman's Rights?

Reports today suggest that India may well sign up to the Hague Conference on Private International Law shortly. Overseas Indian Affairs Minister Vayalar Ravi, in a press conference on the eve of the *Pravasi Bharatiya Divas* (the global conference for overseas Indians) to announce a bill to grant voting rights to non-resident Indians (NRIs), also stated that,

> *Steps are also being taken by the ministry to ensure that Indian women getting married to NRIs are not exploited or abused.*

Mr Ravi said India was **likely** to join the Hague Conference on private international law, to:

> *protect the interests of Indian women.*

There were already rumblings at the Indian Society of International Law Conference a few weeks ago that India were considering it. The Indian Government's consultation on "failed and fraudulent marriages" between Indian women and overseas Indian men has proved controversial in recent past; the National Commission for Women [NCW] New Delhi proposed a draft Convention for such marriages, which recommended, *inter alia*, that:

- Registration of marriage be made compulsory
- Bilateral agreements for protection of such marriages be concluded between India and such other countries where the Indian Diaspora is in large numbers.
- If the NRI husband has not become a citizen of the country, in which he resides, concerned Indian laws to apply irrespective of the place of the filling of the petition for dissolution of the marriage.
- Government monitored conciliation process of settlement of matrimonial disputes be initiated.
- Suppression of information regarding marital status by NRI grooms to be

dealt with under criminal law and steps taken through extradition treaties wherever operational.

The matter was also discussed during *Pravasi Bharatiya Divas* 2005, with the general consensus being that:

- There should be comprehensive legislation so that there is legal remedy available to such girls. Special courts without legislation would be futile.
- Registration of marriages should be made compulsory in case of Overseas Indians. This will ensure compliance of conditions of a valid marriage. There will be complete proof of marriage and it would be a very strong deterrent for bigamous marriages.
- If a person abandons his wife, he should forfeit his property.
- Such instances may be made criminal offences.
- Overseas citizenship of such a person should be forfeited.

Joining the Hague Conference may well help matters, but it isn't exactly clear *which* Conventions will be adopted to alleviate the difficulties facing NRIs. The ISIL report suggests that the Child Abduction Convention is the focus, as it would help the "high incidence of child removal" to and from the UK, US and Canada, by "returning children to the country of their habitual residence by a mutually reciprocal international arrangement between countries." The report suggests that there could be more: "if India signs *some* of The Hague Conventions…Recognition of Indian marriages and divorces and reciprocally similar foreign instances would come to an International agreement." One wonders how much of that is sheer optimism, however.

Private International Law matters were discussed yesterday at the *Pravasi Bharatiya Divas* 2007, with representatives from the Indian Parliament, the Indian Society of International Law and the Minister for Law and Justice in attendance. It will be interesting to see what they make of it all.

Seminar: The Future of International Patent Litigation in Europe

This seminar is part of the British Institute's seminar series on private international law which will run throughout the Autumn of 2006 and well into 2007 entitled *Private International Law in the UK: Current Topics and Changing Landscapes*.

Date: Monday 22nd January 2007, 17.30 – 19.30

Location: British Institute of International and Comparative Law, Charles Clore House, 17 Russell Square, London WC1B 5JP

Speakers:

- (Chair) The Rt Hon. Mr. Justice Kitchin
- Harry Temmink, European Commission
- Nick Gardner, Herbert Smith
- Third speaker to be confirmed

Subject matter:

> *At present patents can be awarded either on a national basis or through the European Patent Office (EPO) in Munich, which grants so-called 'European Patents' with a single application and granting procedure. However, once granted the European patent becomes a national patent for the designated Member State which causes difficulties by the need to work in different national legal systems in case of dispute. In view of the difficulties in reaching an agreement on the Community Patent, other legal agreements have been proposed outside the European Union legal framework to reduce the cost of litigation, namely the London Agreement and the European Patent Litigation Agreement (EPLA).*

The Seminar will address current issues relative to international patent litigation with a particular focus on the practice in England and Wales. It will further

explore recent and future developments at European Community level which will determine the substance of international patent litigation.

Sponsored by *Herbert Smith*. More information, including pricing, can be found on the **BIICL website.**

Seminar: Jurisdiction in IP Disputes

This seminar is part of the British Institute's seminar series on private international law which will run throughout the Autumn of 2006 and well into 2007 entitled *Private International Law in the UK: Current Topics and Changing Landscapes*.

Date: Monday 22nd January 2007, 15.00 – 17.00

Location: British Institute of International and Comparative Law, Charles Clore House, 17 Russell Square, London WC1B 5JP

Speakers:

- (Chair) The Rt Hon. Lord Justice Jacob
- Professor Gerrit Betlem, University of Southampton
- Professor Jan Brinkhof, Brinkhof Advocaten
- Michael Silverleaf QC, 11 South Square

Subject matter:

> *Two ECJ judgments of 13 July 2006 –* GAT v. LuK *and* Roche Nederland BV *– have stirred much concern in the patent community. It was ruled that contrary to practice presently established in some Member States the courts in the country of registration are exclusively competent to adjudicate validity, even when the issue of validity only arises as an incidental matter. Further it has been held that it is also not possible to join claims against affiliated companies*

for coordinated infringement of European bundle patents before the courts in the country where the principal office steering the activities has its seat.

The seminar will feature an in-depth discussion of the implications for the English practice of the recent ECJ cases referred to. It will further explore current issues in England and Wales and other European jurisdictions relative to the subject of jurisdiction in cross-border IP cases.

Sponsored by *Herbert Smith*. More information, including pricing, can be found on the **BIICL website.**

Is Cross-Border Relief in European Patent Litigation at an End?

Marc Doring and Francis van Velsen have written an article in the Journal of Intellectual Property Law & Practice entitled, "**Is cross-border relief in European patent litigation at an end?**" (J.I.P.L.P. 2006, 1(13), 858-860). Here's the first paragraph of the article:

The ECJ decisions in GAT v LuK and Roche v Primus appear to have prohibited cross-border relief, bringing the Dutch and the German patents courts (which were willing to grant such relief in certain circumstances) in line with the English Patents Court (which has always refused to grant such relief). However, the decisions still enable the Dutch and German patents courts to continue to grant cross-border relief in certain circumstances. Whether they will do so remains to be seen.

Those with a subscription to the Journal can download the article from the J.I.P.L.P. website. You can browse some of our other posts on these two ECJ decisions here.

The Impact of Art 6(1) of the ECHR on Private International Law

There is a substantial article by Professor James Fawcett (University of Nottingham, and co-author of Cheshire & North) in the new issue of the International & Comparative Law Quarterly on "**The Impact of Article 6(1) of the ECHR on Private International Law**" (Int Comp Law Q 2007 56: 1-48). The abstract reads:

> *An increasing trend in private international law cases decided by courts in the United Kingdom has been to refer to the European Convention on Human Rights and, in particular, to Article 6. This article will examine the impact of this provision on private international law. The article will go on to examine why the impact has been so limited and will put forward a new approach that takes human rights more seriously, using human rights law to identify problems and the flexibility inherent in private international law concepts to solve them.*

And a small extract from the conclusion to whet your appetite:

> *A new approach is needed which takes human rights more seriously. A hybrid human rights/private international law approach should be adopted. The first stage of this requires the court to ascertain whether, in the circumstances of a particular case, there has been, or there is a real risk that there will be, a breach of Article 6 standards in England or abroad. Human rights jurisprudence should be used to ascertain whether there is such a breach. The second stage involves solving the human rights problem that has been identified. The English courts should act in a way that ensures that they are not in breach of Article 6 standards. In the areas of greatest risk of encountering a breach of Article 6 standards, this can be achieved by using existing private international law concepts of public policy and the demands of justice.*

Those with a subscription to the Journal can download the full article from the ICLQ website.

The Mobility of Companies in Europe

There is an article in the new issue of the European Company and Financial Law Review on "**The mobility of companies in Europe and the organizational freedom of company founders**" (E.C.F.R. 2006, 3(2), 122-146) by Wolfgang Schon (Director, Max-Planck-Institute for Intellectual Property, Competition and Tax Law, Munich). Here's the abstract:

> *The article discusses how the mobility of companies in Europe can be understood in terms of the interplay of EC law, national company law and private international law. Considers the principles upon which these laws apply to different forms of company mobility, including transfers of the real seat, transfers of the registered office and cross-border mergers.*

And here's the prologue from the publisher's website:

> *Klaus Hopt's disciples have asked me to give a presentation in his honour on the topic of "mobility of companies in Europe". To be honest, I would have preferred another subject which focuses much more on the person at the centre of this event. The topic would read: "The mobility of a company law professor in Europe". There exist more than enough articles on the future of the "real seat theory" and the "incorporation theory" regarding the legal framework for enterprises after the famous ECJ decisions in Centros, Überseering and Inspire Art. Nobody seems to care about individuals. Yet in the case of Klaus Hopt we should have second thoughts: Is he a legal person? Of course he is – there is hardly another writer who has acquired so much practical and scientific experience in law and affiliated research areas. Does he have a registered office? I think so – it should be at the Max Planck Institute for Foreign and*

International Private Law in Hamburg. Can we attribute a siège réel to him? This is hard to say. Starting his academic career in Tübingen, he has moved his chair to Florence, to Berne, to Munich and to Hamburg. If he were a company, he would have been liquidated on this itinerary at least three times. Currently he teaches in Paris, in New York and in many other places. He travels around the world, giving university lectures, attending committee meetings and organising conferences. Is it possible to say – as the European Court of Justice put it in Daily Mail – that he owes his existence to the domestic legal order of only one specific Member State of the European Union? Or should we qualify him as a supranational entity, the human role model for the "European Company", who is able to move from country to country without losing his identity, being able to communicate in many different languages, feeling at home in many different legal orders?

Those with access to the Journal, either through a subscription, or Athens, or some other means, can download the PDF version of the article from here.

The Battle over Jurisdiction in EC Insolvency Law

Thomas Bachner has written an article in the European Company and Financial Law Review on "**The battle over jurisdiction in European insolvency law – ECJ 2.5.2006, C-341/04 (Eurofood)**" (E.C.F.R. 2006, 3(3), 310-329.) Here's the abstract:

The article discusses the European Court of Justice ruling in Re Eurofood IFSC Ltd (C-341/04) on the conditions which can rebut the presumption that a subsidiary company's centre of main interests within the meaning of Council Regulation 1346/2000 Art.3(1) was the jurisdiction where its registered office was located. Considers whether the Irish court's appointment of a provisional liquidator to act for the Irish subsidiary of an Italian parent company constituted a judgment opening insolvency proceedings for the purpose of

Art.16(1) of the Regulation. Assesses whether Italian proceedings were invalid under Art.26 on the ground that the provisional liquidator was denied the right to be heard.

Again, available to those with access to the Journal.

Communication Breakdown

Quite a few private international law case comments were published just before the New Year. We'll start with Edwin Cheney's "**Communication Breakdown**" in the *Commercial Litigation Journal* (Co. L.J. 2006, 10(Nov/Dec), 9-11). The note:

...examines the Commercial Court judgment in Newsat Holdings Ltd v Zani in which the court considered whether an alleged deceit in the form of a statement made by a defendant located abroad to claimants through their London based lawyers was an act committed within the jurisdiction for the purposes of the CPR Part 6 r.6.20(8)(b). Summarises the characteristics of the tort of deceit and considers earlier authorities on the conflict between the place where a statement is made and where it is received.

Available to those with a subscription to the Journal.

Internet Defamation and Choice of Law in Dow Jones v Gutnick

Yet another article originally published in the 2003 issue of the *Singapore Journal of Legal Studies* (pp. 438-518) has been posted on SSRN: "**Internet Defamation**

and Choice of Law in Dow Jones & Company Inc. v. Gutnick" by Gary Ky Chan (Singapore Management University – Department of Law) & Michael Hor (National University of Singapore – Faculty of Law). The abstract reads:

> *This article focuses on choice of law in the context of Internet defamation with reference to a recent Australian High Court decision, Dow Jones v. Gutnick. The case raised a myriad of issues ranging from comparative defamation laws (and value systems) of the United States versus Australia, the meaning of "publication" and the need for Internet-specific legal reforms. These issues interact with and have an impact upon the choice of law problem. This article discusses the various alternatives for resolving the choice of law problem. It concludes by tentatively recommending some choice of law rules in the context of Internet defamation.*

Download the article from here for $5.

Applicable Law Aspects of Copyright Infringement on the Internet

An article by Andrea Antonelli on "**Applicable Law Aspects of Copyright Infringement on the Internet: What Principles Should Apply?**", which originally appeared in the *Singapore Journal of Legal Studies, pp. 147-177, 2003*, has been made available for download on SSRN for a small fee. Here's the abstract:

> *Digital technology, and particularly the Internet, is reducing the cost of publishing works, but has also made the unauthorised copying and distributing of works virtually costless. Despite the level of harmonisation of copyright laws worldwide, achieved through the Berne Convention, the TRIPs Agreement and WIPO Copyright Treaty, such copyright infringements on the Internet still give*

rise to a number of relevant conflict of laws issues. This article focuses on the analysis of the applicable law rules provided under the Berne Convention in relation to economic and moral rights in the light of the various technical scenarios of copyright infringement in cyberspace. From this perspective, it also attempts to assess if and to what extent it is possible to attribute a new meaning to too often datable applicable law principles.

You can access the full article here for $5.