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No access to confidential information gathered in Belgium through patent infringement proceedings in France

Kristof Roox (Crowell & Moring) · Wednesday, June 9th, 2010

In a court order of 11 May 2010, the President of the Court of First Instance of Brussels refused a plaintiff to have indirect access to confidential information in the possession of a court-appointed expert through foreign patent infringement proceedings. The court appointed expert had obtained this confidential information while executing a counterfeit seizure, authorized by the Court of Appeal of Ghent following an *ex parte* request.

The aim of the counterfeit seizure was to gather evidence to be used in patent proceedings in France. After third party opposition proceedings, the Court of Appeal of Ghent changed its view and declared the *ex parte* request for the counterfeit seizure (and all its consequences) null and void, including all the work done by the expert. The party that had requested the counterfeit seizure consequently filed an appeal with the Belgian Supreme Court. Since this appeal has no suspensive effect and to prevent that the court appointed expert would reconstitute all the information gathered during the counterfeit seizure, preliminary injunction proceedings were initiated against the court appointed expert to avoid that the information would disappear.

Despite the fact that the seizure was declared null and void, there was a risk that the plaintiff would have access to the confidential information given its claim in the French infringement proceedings to order the communication of the “Belgian information”.

The President of the Court of First Instance of Brussels ruled that an expert appointed in the framework of a counterfeit seizure at all times has to safeguard the confidential nature of the information and documents he obtains, even when drafting his report to the court. Therefore and in particular since in this case such an expert report had not even been submitted to the court, the President refused to hand down an order that would allow, via the by-route of foreign proceedings on the merits, access to the confidential information and documents held by the court appointed expert. More specifically, the expert was ordered to keep this information in his possession until a final ruling on the validity of the counterfeit seizure would intervene in Belgium, even if a (foreign) court on the merits would oblige him to do the contrary.

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