

Waiting for Urgency in New Courtroom

Kluwer Patent Blog
September 14, 2010

Thomas Musmann (Rospatt Osten Pross)

Please refer to this post as: Thomas Musmann, 'Waiting for Urgency in New Courtroom', Kluwer Patent Blog, September 14 2010, <http://patentblog.kluweriplaw.com/2010/09/14/waiting-for-urgency-in-new-courtroom/>

In [my first post](#) I have described the old shabby courtroom of the patent chamber of the District Court of Düsseldorf. Meanwhile the court has moved to a new court house which is situated close to the central station. This new location is the result of a more service oriented approach of the judiciary. Not only can you reach the court easily by train, more importantly the most frequent customers of the -criminal branch- of the court can just walk in the course of their business at the central station.

Whereas the courtroom has been shabby but relatively large in the old building, now it is very small. You have to almost sit on the lap of your adversary while you are pleading. If your client wishes to watch you pleading his case, possibly with the assistance of simultaneous translation, you have to inform the court in advance. The court then tries to arrange for one of the very few larger courtrooms which is -you have already guessed it- a courtroom for serious criminal cases.

The case I have discussed in [my other post](#) has been heard in the criminal courtroom for this reason. It was quite an odd feeling to defend the case on the bench where usually the criminal defendants are placed, after they have entered the courtroom through a sally port, controlled by safety guards. Somehow one feels guilty. Anyhow, this was the scenario for the decision of the District Court on the opposition against the preliminary injunction which has been rendered ex parte against my client. As explained in more detail in [my previous post](#), the court has granted the injunction although the plaintiff has deliberately decided not to take action while the opposition against his European patent was pending. He preferred to wait until the opposition division -of course erroneously- decided to dismiss the opposition. The court obviously was of the opinion that -from this day on- plaintiff once again was entitled to urgent court relief, i.e. an ex parte injunction.

At the hearing this -and of course infringement and validity- has been discussed thoroughly. At least initially the court has confirmed that it indeed is of the opinion that the urgency clock starts ticking anew after the patent has survived an attack on its validity (in first instance).

The preliminary injunction was lifted, not for this reason, but because we were able to convince the court that the patent will be revoked upon appeal. Therefore the court was not forced to address this procedural issue in its judgment. Unfortunately the case was not appealed by the plaintiff, so that we still have to wait for a verdict of the Appeal court on this issue, which is highly relevant for the litigation strategy.

What is your opinion?

Should a patentee, who has not acted against a known infringement, but waited for the outcome of opposition procedures have the right to ask for a preliminary injunction, even ex parte, once the patent is confirmed?

Thomas Musmann