

Kluwer Patent Blog

Enforcement of IPR at German Trade Fairs – The Long-Standing “On-Call Duty” of the RC Braunschweig

Thorsten Bausch (Hoffmann Eitle) · Friday, January 10th, 2014

The Hanover Trade Fair is the world’s leading trade fair for industrial technology and will take place between 7 and 11 April 2014. The CeBIT is the world’s largest computer expo and will be held between 10 and 14 March 2014. With regard to these important trade fairs and many more taking place in Hanover, the presiding judge of the specialized chamber for patent, utility model, design and trademarks at the Regional Court Braunschweig and his team are prepared to receive requests for provisional injunctions as of 7:00 am as well as on Saturdays and Sundays, depending on the schedule of the trade fair. The court is even willing to hold a hearing at the exhibition site. An English version of the recently published time schedule of the Regional Court Braunschweig for its stand-by-duty in 2014 can be found [here](#). Already in the 1960s, the Regional Court Braunschweig commenced a special “on call-duty” with regard to urgent trade fair matters and throughout the decades has extended and perfected this service for the Hanover Trade Fair as well as for other trade fairs.

If, for instance, the right-holder discovers a patent, utility model, design or trademark infringement by a product itself or a display in a brochure on the first day of an exhibition and contacts an attorney who prepares a request for a provisional injunction on that day, this request can be filed as early as 7:00 am the next morning. The court will probably take a decision by noon or afternoon, and, if granted, the injunction can then be immediately enforced with the help of a bailiff.

Similar speediness can be expected at other specialized courts in Germany, such as the Regional Courts of Dusseldorf, Munich, Frankfurt and Hamburg. In addition to court measures, trade fairs in Frankfurt and Cologne provide special out of court mediation proceedings concerning IPR infringing goods.

In particular with regard to patent and utility model rights, the case must, of course, be eligible for provisional injunction proceedings, i.e. there must be a clear-cut infringement, and good arguments for the validity of the right.

With regard to the validity requirement, the Higher Regional Court Braunschweig decided that it is not a prerequisite that the patent has already “survived” opposition or nullity proceedings (HRC Braunschweig of 21 December 2011, docket 2 U 61/11, see also HRC Dusseldorf, 29 April 2010, 2 U 126/09 which allowed exceptions to the general requirement that a patent must have “survived” such proceedings).

The Federal Court of Justice decision “Pralinenform II” which could be understood to the effect that it restricts the understanding of (trademark right infringing) “offering” by requiring a specific “invitation to purchase” has, so far, not been followed by lower courts (the only exception is the Regional Court Mannheim with its decision of 29 October 2010, docket 7 O 214/10 in a patent case). According to recent court decisions, if a trade fair is “held for commercial purposes”, the presentation of products, also in brochures, must generally be understood as “offering” under IPR laws without any further conditions (see RC Braunschweig of 1 June 2011, docket 9 O 842/11 (124); HRC Cologne of 11 November 2011 (docket 6 U 43/11); Regional Court Hamburg, 14 September 2011 (docket 315 O 264/11)). See also our previous contribution on the concept of “offering” at trade fairs after “Pralinenform II” [here](#).

Right-holders can also enforce their intellectual property rights under criminal law (see below Kluwer reading recommendations, “on police seizures”, and, most effectively prior to a trade-fair, on the basis of customs law. However, all measures require that the manufacturer of innovative products has obtained IP rights prior to the trade fair!

Anja Petersen-Padberg

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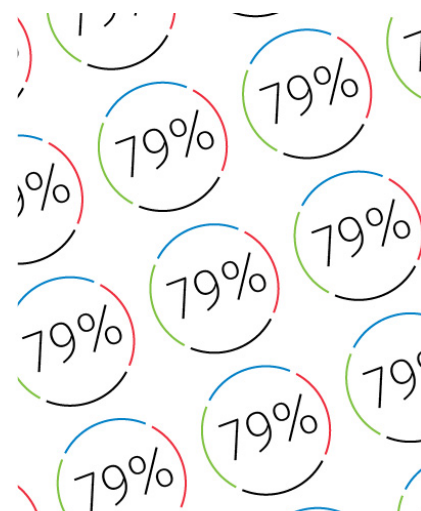
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