

The wording of Prayers for Relief: A complicated Swiss affair

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The wording of prayers for relief in patent infringement proceedings remains a hotly debated issue in Switzerland. In a landmark decision dated 2004 (BGE 131 III 70) the Swiss Federal Supreme Court ruled that the patent infringing goods or procedures had to be exactly described in the prayers of relief of a cease-and-desist order. Since then, it has not been sufficient to simply repeat the wording of the claim of the allegedly infringed patent. In particular, this holds true if the interpretation of the claim features is highly controversial between the parties. The authorities that are in charge of the enforcement of an injunction cannot be expected to reassess the meaning of the patent claim. That would, however, be the case if the operative part of the judgment requires the interpretation of controversial technical terms. Therefore, Swiss courts now also require that the prayers for relief describe in detail how the contested embodiment makes use of every feature of the patented invention. In some cases it might be helpful to include the wording of the patent claims in the demand, but it is usually not considered to be sufficient.

In contrast to the above, the Swiss Federal Patent Court, which took over a case from the Cantonal Supreme Court of Geneva, allowed in a recent judgment in the matter of *Richemont International S.A. v. De Grisogono S.A.* (O2012_033; appeal pending) that the wording of the prayers for relief basically repeat the wording of the allegedly infringed patent Claim.

In the case at hand, Richemont's patent (CH.695.712) concerned a date display for timepieces comprising separate discs carrying figures indicating tens and units, with mechanism presenting them side by side. Fig. 1-3 of CH 695 712 A5 show how the mechanism works, i.e. how the sequence of a date Switches.

Claim 1 of CH 695 712 reads as follows:

Mechanism to display a number consisting of two separate digits on two different plates, comprising:

a plate forming an annulus (1) on which is put a first set of digits and a tothing at its inner circumference to drive it;

a mobile (9,10) with a plate (9) on which is put a second set of digits and a toothed part (10) with a multitude of teeth, whereby the plate (9) is partially superimposed on the annulus (1) so that at each stable position of the annulus (1) and of the mobile (9,10), a digit put on the plate (9) is located next to a digit put on the annulus (1), whereby these two digits appear next to each other in one or two openings (2,13) of a frame;

this mechanism being characterized in that the mobile (9, 10) is pivot-mounted outside of the annulus (1) and whereby the annulus (1) comprises a tothing also at its outer circumference which interacts with the teeth of the toothed part (10).

The Swiss Federal Patent Court held that for an injunction request to be admissible it must contain a detailed description of the incriminated act. This description must be sufficiently specific such that a purely factual examination is sufficient to determine whether a future act is prohibited. A description which requires a legal qualification or the interpretation of ambiguous technical expressions is insufficient. A request for a permanent injunction can therefore be based on the wording of a patent claim only if the wording of the patent claim itself fulfils these requirements.

The Swiss Federal Patent Court came to the conclusion that this was the case here.

On the merits, the defendant was ordered to cease and desist from using the invention, and to provide the sales figures of the infringing devices within a deadline of 60 days. The counterclaims of the defendant were dismissed. Appeal has been filed with the Federal Supreme Court.