

## Exhibiting on a trade fair qualifies for patent infringement in principle

Kluwer Patent Blog  
March 4, 2016

Markus Lenssen (Rospatt Osten Pross)

Please refer to this post as: Markus Lenssen, 'Exhibiting on a trade fair qualifies for patent infringement in principle', Kluwer Patent Blog, March 4, 2016, <http://patentblog.kluweriplaw.com/2016/03/04/exhibiting-on-a-trade-fair-qualifies-for-patent-infringement-in-principle/>

There has been some confusion in Germany as to whether exhibiting products and services on a trade show qualifies as an infringing act or not. Most prominently, two decisions of the German Federal Court of Justice (Bundesgerichtshof, BGH) have denied a general rule that any presentation of goods or services on a trade show justifies the presumption that the products are offered for sale or put into circulation in Germany as an infringing act with respect to trademark law (decision "Pralinenform II") and with respect to unfair competition law (decision "Keksstangen").

The Regional Court of Düsseldorf (Landgericht Düsseldorf) now again had a chance to present their view on this issue with respect to patent law. To put it in a nutshell, the court did not follow the Federal Court of Justice but stated that in principle exhibiting on a trade show does qualify for patent infringing acts. In their decision "Steuervorrichtung für Klauenverriegelungselemente" ("Device for controlling the opening and closing of locking clamps", LG Düsseldorf, 4b O 30/13) the court expressed that as a general rule exhibitors on a trade show want to initiate business relations with interested visitors and to sell their products. The products are presented with the expectation that they are demanded by visitors of the trade show. Exhibiting on a trade show is in particular intended to attract interest in the products and to facilitate corresponding business. Therefore, exhibiting on a trade show qualifies as an infringing act in principle.

This general rule also applied to the case at issue for the following reasons: The relevant show was not regarded as a mere exhibition but as a veritable trade fair. This was backed-up by the own presentation of the trade show claiming to be a professional trade fair to bring business partners together aiming for business. Over one third of all visitors represented purchasing and selling departments of their companies, another third represented CEOs and other members of the management. The mere fact that cash sales were not allowed on that trade fair did not change the picture in any way according to the court as this would not exclude selling activities in general.

It can be taken from the judgement that the court did not require more evidence (like actual and explicit offers) to regard exhibiting on a commercial trade fair as a patent infringing act itself.

Dr. Markus Lenßen, LL.M. (Cantab.)  
rospatt ostent pross- Intellectual Property Rechtsanwälte