

Russian Crash Cushions Crash on Dutch Ex Parte Injunction

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Alexander de Leeuw (Brinkhof)

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Other than ex parte (evidentiary) seizures, ex parte preliminary injunctions are considered a rare phenomenon in the field of patent law in the Netherlands. The burden for obtaining an ex parte injunction is high and the allegedly infringing party could have filed a protective letter. Very recently the Dutch patent court in The Hague has shown its willingness to grant an ex parte injunction (and following that an ex parte seizure) at international trade fairs.

An Italian company devoted to road safety solutions developed and patented a roadside crash cushion. They discovered that a Russian company copied their technology and that this company planned to exhibit its infringing crash cushion during the international Intertraffic 2018 trade fair in the RAI in Amsterdam. This was the first time the Russian company was actively trying to enter the European market with its crash cushion and the Italian company found out about this only days before the start of the trade fair.

The Italian company subsequently filed a request for an ex parte preliminary injunction on a Friday and further substantiated it over the weekend at the request of the court. The court was able to very rapidly deal with the request and granted the injunction (together with a € 20.000,- penal sum per day) on Monday, a day before commencement of the trade fair. Things became even more interesting when the Russian company decided not to comply with the court order and continue the infringement. At the request of the Italian company the court granted permission for an ex parte seizure during the trade fair, allowing the crash cushion to be removed from the trade fair altogether as well as marketing material displaying the infringing product (such as flyers and USB-sticks).

This shows that the Dutch courts are not reluctant to stop infringement of a patent during a trade fair, even when this involves ex parte measures requested at a very short term. The speed with which the court was able to effectively deal with the infringement is admirable and shows that ex parte measures are a viable option for patent proprietors faced with infringement during a trade fair in the Netherlands. At the same time, this shows the importance of filing protective letters.