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Schütz v. Werit, High Court of England and Wales, 31 March 2010

Brian Cordery (Bristows) · Monday, May 31st, 2010

Schütz owned two patents relating to the field of intermediate bulk containers or ‘IBCs’, which are large plastic bottles contained in cages and used to transport hazardous liquids. Schütz objected to Werit’s sales of bottles to a company called Delta since Delta incorporated Werit’s bottles into Schütz’s second hand cages. The key question in the case was whether Delta’s acts constituted ‘making’ an infringing product. The Court held that, in these circumstances, the relevant test is to ask whether, when the part (i.e. the bottle) is removed, what is left (i.e. the cage) embodies the whole of the inventive concept of the claim or not. On the facts, the Court held that inventive concept was wholly embodied in the cage. It followed that Delta’s replacement of the bottles did not amount to ‘making’ the product and there was therefore no infringement.

A [full summary](#) of this case has been published on [Kluwer IP Law](#).

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