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New provision on summary DJ actions in Italy

Daniela Ampollini (Trevisan & Cuonzo) · Friday, November 12th, 2010

In the past, Italian courts have regularly dismissed motions for interlocutory (pre trial) declaratory judgements of non infringement in IP cases. The firm belief of the courts was that interlocutory proceedings could not be used to obtain DJ orders for a number of procedural reasons. The Scott Paper decisions of the Italian provincial court of Pescara (1994) represented a turning point since for the first time a preliminary order was granted (and upheld in the appeal) declaring that the use of a trademark was lawful (i.e. was not in breach of an injunction over a similar mark). After 1994 there have been sporadic decisions following the reasoning of Scott Paper, however the majority of the courts refused to allow DJ interlocutory proceedings. The recent reform of Art. 120 of the IP Code introduced by Legislative Decree no. 131/2010 has clarified that DJ interlocutory actions are admissible in all IP cases (in more detail, new Art. 120 6.bis IP Code provides that “the rules on jurisdiction established in this article shall also apply to declaratory judgment proceedings, including those filed in the framework of preliminary proceedings”: this provision implicitly – but clearly – establishes that DJ interlocutory actions are admissible). The practical consequences could be relevant as it will be possible for alleged infringers to obtain summary judgements of non infringement in a relatively short time, which may prove to be an interesting tool to limit the risks of an adverse preliminary injunction. Still not clear, however (as the law does not provide a clear guidance and as new Article 120 6 bis IP Code is too new to have been tested already by the courts) whether this tool will work both in case of alleged non infringement because of non interference and in case of non infringement because of invalidity of the patent.

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