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## The “Munich proceedings”- a trump card for the Munich Patent Chambers?

Thorsten Bausch (Hoffmann Eitle) · Wednesday, February 16th, 2011

The Patent Chambers of the Regional Court Munich headed by Judge Guntz and Judge Kaess, introduced a revised procedure to accelerate patent infringement litigation proceedings at the end of 2009. After one year, the new proceedings are well accepted by practitioners. The new proceedings generally procure more time and cost efficient patent infringement proceedings. The Munich Patent Chambers aim at offering an attractive court for patent litigation in competition with the popular courts in Düsseldorf and Mannheim. A special feature of the new proceedings is the offer of mediation proceedings in patent infringement matters.

The new procedure, known as “Münchener Verfahren” (“Munich Proceedings”) relies on three main aspects. First, the initial oral hearing is treated as a serious trial date that fully qualifies as an oral hearing. In former patent infringement proceedings the initial hearing was a mere formality to coordinate the trial by e.g. setting the date of the main hearing. In the “Munich Proceedings” the initial oral hearing is held after the defendant submitted its defence statements. It therefore permits a first discussion of the legal aspects of the case, the negotiation can be streamlined to the controversial legal aspects of the case and the court presents a first appraisal of the case.

Second, the court decides on the number of briefs necessary to solve the case and sets up fixed periods for their submission to accelerate proceedings. In general, no more than 4 written submissions are required as the initial hearing already focuses the controversy on specific legal aspects. In addition, the streamlined proceedings seem to have the positive effect that expert opinions or court experts are redundant in the majority of cases. Since June 2009 the court heard only one expert in court.

And third, the court offers a mediation mechanism, to promote early settlements.

In practice, the timeline is as follows: After the filing of the complaint, the defendant has 8 weeks to file its counterstatement, the initial hearing is then held 2-3 weeks later. Replication and rejoinder receive each a months’ period and the judgment is passed about 6 weeks after the last submission. According to the experience of the court, an initial oral hearing is held 2-3 months after the complaint has been served and a judgment is usually passed 4-7 months later.

The feedback from the lawyers’ side seems to be positive. In an open discussion on experiences after a year with the “Munich Proceedings” held by the UNION, a European association in the field of intellectual property, the majority of lawyers stated that they appreciated the efficiency of the trial. An aspect mentioned as positive was that proceedings were rarely stayed by the court, although due to the short duration of the proceedings the trial is often concluded while nullity

proceedings are still pending. The presiding judges participating in this discussion noted that parties were still hesitant to use the mediation mechanism. Some lawyers expressed the concern, that a failed mediation could have a negative impact on the ongoing trial, but the judges assured that any statement made during mediation proceedings would be treated confidential and have no impact on a later trial.

The coming years will show whether the “Munich proceedings” actually attract more patent litigation from Düsseldorf or Mannheim to the Munich Patent Chambers.

by Dr. Esther Pfaff

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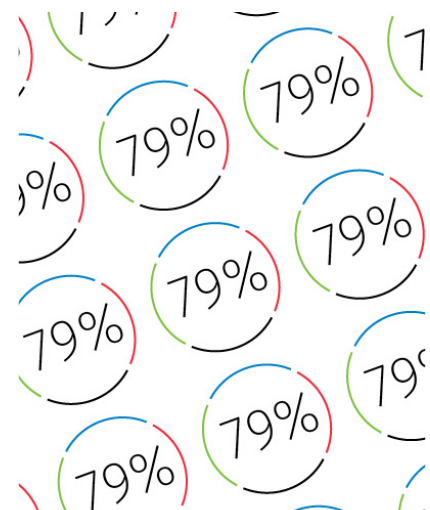
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### Procedure

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