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Apple v. Samsung: Cross-border injunctions are back in The Hague, but only in provisional proceedings

Richard Ebbink (Brinkhof) · Friday, August 26th, 2011

In its 2006 decision in the matter called *GAT/LuK* the ECJ held that Article 22-4 of the Brussels Regulation – which provides for exclusive national jurisdiction regarding the validity of patents and other registered rights – applies to all proceedings relating to the validity of a patent, irrespective of whether the issue is raised by way of an action or plea in objection.

By decision of 22 December 2010 the District Court of The Hague (Judge Kalden) referred to the EUCJ several questions on the interpretation of the Articles 6-1, 22-4, and 31 BR. One of those questions is whether the *GAT/LuK* decision also applies in *provisional* proceedings. The case is called *Solvay/Honeywell* and is pending before the EUCJ under case number C-616/10. A decision may be expected before the end of 2012.

By decision of 15 July 2011 the Court of Appeal of The Hague in a trademark matter called *Yellow Page/Yell* first held that Article 22-4 BR and the *GAT/LuK* decision equally apply to trademark matters. The CoA then held that the Dutch Courts have cross-border jurisdiction against Dutch domiciled defendants and that they will exercise that jurisdiction in provisional proceedings notwithstanding a foreign invalidity defense, until the EUCJ in case C-616/10 will hold otherwise. Given that they took three pages to motivate their opinion – which is long for a Dutch decision – it is reasonable to assume that they feel strongly about the matter.

Based on the authority of this decision the Preliminary Measures Judge of the District Court of The Hague (Judge Brinkman) in his 24 August 2011 Kort Geding decision in the *Apple/Samsung* matter granted a cross-border PI against the three Dutch Samsung defendants.

Conclusion: Until the EUCJ decides otherwise in case C-616/10 patentees can obtain cross-border injunctions against Dutch defendants in The Hague in provisional proceedings, whether those proceedings be part of merit proceedings, or be Kort Geding proceedings. This state of affairs is unlikely to change before a decision will be rendered by the EUCJ in case C-616/10. This decision may be expected – but is by no means certain to be rendered – before the end of 2012.

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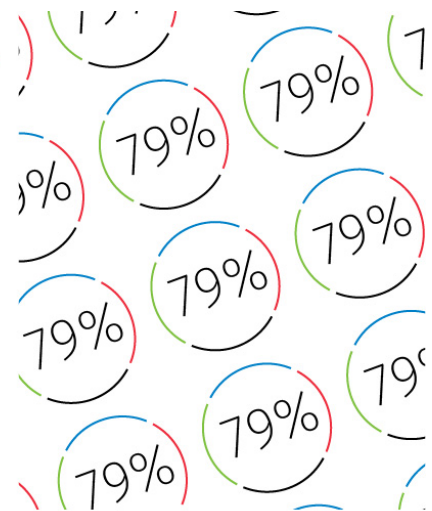
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