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Forfeiting injunctive relief because of inflated claim values?

Thomas Musmann (Rospatt Osten Pross) · Friday, May 24th, 2013

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The amount at issue in a legal claim serves as the basis for establishing the court fees and lawyers' fees to be reimbursed to the successful party. The consequences (including indictable consequences) of a claim value that has been set too low have previously been the object of contributions to this blog.

§8 IV Unfair Competition Act (UWG) stipulates that the right to injunctive relief, which does exist in principle, is forfeit wherever it is asserted abusively. By analogy, the Court of Appeal Hamm applied this provision to copyright law and dismissed a claim for an injunction and award of lawyers' costs that had accrued prior to proceedings. It found that said lawyers' fees had been calculated based on an inflated claim value and that the claimant's conduct prior to bringing her action was an abuse of the law.

This finding has been quashed by the German Supreme Court in its recently published decision of 3 May 2012 (I ZR 106/10). It ruled that §8 IV UWG could not be applied by analogy because copyright law did not have any unintended loopholes. Even a deliberately inflated claim value did not constitute a misuse of the law that might justify forfeiting injunctive relief.

Conclusion: This should hold true for patent law too.

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