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Finland: Supreme Court Rules on Information Disclosures in Patent Litigations

Jan Lindberg (Attorneys-at-Law TRUST) · Thursday, March 14th, 2019

The Finnish Supreme Court resolved in February 2019 on the matter of whether or not the preconditions for precautionary measures were at hand in a patent law infringement case. Firstly, the Court interpreted the Act regarding Preservation of Evidence in Civil Cases Concerning Intellectual Property Rights (344/2000, as amended). Moreover, the Court analysed the information disclosure request and a request to safeguard relevant evidence in regard to the alleged infringement. The Finnish Market Court had previously resolved on the matter in October 2016 with decision 574/16, to which the Supreme Court granted the leave to appeal.

The applicant (“A Ltd”) required that the bailiff be ordered to make copies from certain documents which were in the possession of the counterparty (“B Ltd”). The requested documents consisted of information in accounting material and customer data regarding the industrial rights and copyrights connected to the products of the respondent. In addition to the primary request of obtaining copies from the material, A Ltd secondarily required that it be determined that the material be confiscated. Moreover, A Ltd requested that it gets the right to familiarise itself with the abovementioned material with the bailiff (the role of the bailiff is based on the Finnish Enforcement Code (705/2007, as amended) and its relation to the legislation pertaining to precautionary measures). The application regarding the precautionary measure was based on the infringement of patent by B Ltd because the applicant considered the opposite side to have infringed a patent of A Ltd when marketing and delivering its products. Naturally, the respondent, B Ltd, requested a rejection of the application.

The Supreme Court used its traditional reasoning regarding the fulfilment of the preconditions for and precautionary measure. In the case there were four elements under evaluation. These elements were:

- I. whether there is an arguable case on the merits from the point of view of the patent;
- II. whether the requested documents have significance as evidence in a trial;
- III. whether there is a risk of serious or irreparable harm which cannot be adequately compensated for by damages (including the need for urgency); and
- IV. the principle of proportionality analysis (meaning that the possible injury caused by the requested measure must not be disproportionate to the advantage which the applicant hopes to derive from it

In this regard, the Supreme Court referenced the reasoning of the previous instance. The argumentation of the Court regarding requirements for the fulfilment of a precautionary measure

followed previous praxis of the Supreme Court, but there were some fresh elements in the argumentation, but here we focus on the more interesting part of the ruling. The Court evaluated the right of A Ltd to examine the documents whose provision was requested with the precautionary measure. It was argued that A Ltd did not have the right to see the documents requested as the requested material consisted of trade secrets of B Ltd.

The Finnish Code of Judicial Procedure (4/1734) stipulates that a person may refuse to testify regarding a commercial or professional secret, unless very important reasons, taking into consideration the nature of the case, the significance of the evidence in respect of deciding the case, and the consequences of presenting it as well as the other circumstances require such testimony. This meant that the Court had to make an interpretation on the content of the term “*very important reason*”. The Court concluded that since the requested documents are *specified* and related to a product group *directly infringing on* the patent rights of the applicant, there is a *very important reason* to present the information. The Court (partly) approved the precautionary measure and granted the applicant the right to become acquainted with the material related to the precautionary measure with the bailiff. The presented ruling can perhaps best be seen as an indication of slow movement towards recognising more open document disclosure requests in connection with patent litigations. It will further be interesting to see how these various specific conditions such as the *very important reason* in this case are interpreted in the future so we will continue to monitor the developments.

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