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The Mannheim Regional Court refuses CJEU reference in *Nokia v Daimler* – time for the Commission to investigate?

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This month the Mannheim Regional Court released a decision ([here](#)) in the dispute between Daimler AG, owner of the famous Mercedes-Benz brand, and the Finnish company Nokia (also see our previous post on this blog ([Another CJEU ruling on standard-essential patents and FRAND looks inevitable](#))). The controversy centred on Nokia's European Patent **EP2981103**, which the German court found to have been infringed by Daimler. The invention relates to the "*allocation of preamble sequences for an access procedure in a mobile communication system*", namely telecommunications technology employed in cars for e-connectivity. The patent in question is a standard essential patent (SEP) as it is relevant to UMTS and LTE mobile phone standards – with car manufacturers in Europe being dependent on this technology to enable their cars for e-connectivity. The dispute has been closely watched as it may have effects for the Internet of Things as mobile connectivity is getting more and more crucial in a wide range of industries.

Cars and other motor vehicles operate such sophisticated communication technologies that they are sometimes referred to as "smartphones on wheels". Auto-manufacturers thus require access to the latest technological standards – 4G and 5G – that are key to navigation and communications. Inevitably, these essential technologies are often the subject of patents and thus require licensing. When the companies that own the patents (licensors) and the manufacturers who seek to make use of the tech (potential licensees) cannot agree on the terms in line with commitments to fair, reasonable and non-discriminatory (FRAND) licensing, patent disputes are inevitable.

In the lead up to this ruling Nokia and Daimler had accused each other of not making a FRAND-compliant licence offer. Indeed, there was disagreement between the two companies in relation to how the royalty should be calculated. On the one hand, Nokia asked Daimler to pay royalties based on each car sold instead of giving auto-part makers licences for the components they manufacture. But the German car producer argued that the fees would be too high, demanding instead that Nokia license the patented technology to the suppliers of the equipment used to integrate mobile devices in its cars – and such suppliers would then charge Daimler. Some of these suppliers, such as Robert Bosch and Continental, supported Daimler in the litigation.

Ultimately, Nokia succeeded at the Mannheim Regional Court because it was found that Daimler was not behaving as a willing licensee. According to the court, the German car maker had refused to follow existing FRAND rules for SEPs. The court thus granted Nokia an injunction which may have the dramatic effect of preventing sales of Mercedes vehicles in Germany. In making its ruling

the court arguably seems influenced by the German Federal Court of Justice's *Orange Book Standard* case of 2009 as much as, if not more than, the CJEU *Huawei* decision of 2015. In *Huawei*, the CJEU agreed that every SEP owner is entitled to obtain a patent licence for standard technology on FRAND terms, and in some cases injunctions may be granted, but that both parties must enter into negotiations in a fair and proper manner, reflecting bona fides. In the recent case the Mannheim court appears to have focused more on *Orange Book Standard*'s apparently greater focus on the behaviour of the potential licensee than the potential licensor. This is controversial in light of *Huawei*.

The Mannheim Court also – perhaps surprisingly – rejected the option of making a preliminary reference to the Court of Justice of the European Union (CJEU) for a ruling on a series of questions relevant to competition law and standard essential patents. This had been requested in June 2020 by the German Federal Cartel Office (the competition enforcement agency) in an *amicus curiae* brief. The German Federal Cartel Office had called on the Mannheim District Court (and other courts dealing with related cases between the parties) to stay proceedings and refer several questions to the CJEU, including the following (which are particularly relevant to the dispute in question):

- Can a SEP owner decide which entity within a supply chain to sue for infringement, or does each entity's overall value within the chain need to be taken into account in light of competition law?
- Can SEP owners decide entirely of their own accord which entities they will license to and which ones they refuse to license to, depending on what stage of the supply chain the potential licensee operates at?

As noted above, the Mannheim court refused to make the reference to the CJEU involved. An appeal is inevitable – so there is a chance that a CJEU reference may occur later on in the proceedings. This would be welcome as further clarifications from the CJEU on the relationship between the broad guidance in *Huawei* and the steps national courts may take in considering injunctions would be very useful for all concerned.

Over to the Commission?

With the CJEU preliminary reference procedure not engaged (for now) it is worth considering whether the European Commission may now decide to get involved. In late 2019, 27 companies, including Daimler, but also Ford, BMW, Dell, Cisco, Continental, Lenovo and Sky filed a complaint to the Commission concerning standard essential patents and competition. The basis of the complaint concerns alleged abuses of the patent system that could – in their view – jeopardise the development of self-driving vehicles and relevant connected devices. Although the complaint did not mention Nokia by name, the clear implication is that the Finnish multinational has been refusing to license its standard essential patents to car companies and component suppliers on terms viewed by the complainants as FRAND. The potential licensees believe that the fees demanded by Nokia are excessive, and potentially a violation of EU Competition law (abuse of a dominant position under Article 102 of the Treaty on the Functioning of the European Union (TFEU)). Thus, Daimler and its suppliers argue that Nokia's licensing behaviour doesn't comply with EU obligations. The Commission has yet to take action.

It will be interesting to see if the Mannheim Court's refusal to send the matter to the CJEU will have any effect on whether the European Commission decides to go ahead with the potential investigation focused on Nokia's alleged abuse of dominant position ([Car wars: how Nokia could](#)

find itself at centre of EU investigation over technology patents). Time will tell. In any case, we still await further clarity on the relationship between patent law and competition law – and on how to consider the powers of national courts in light of CJEU rulings in the SEPs field.

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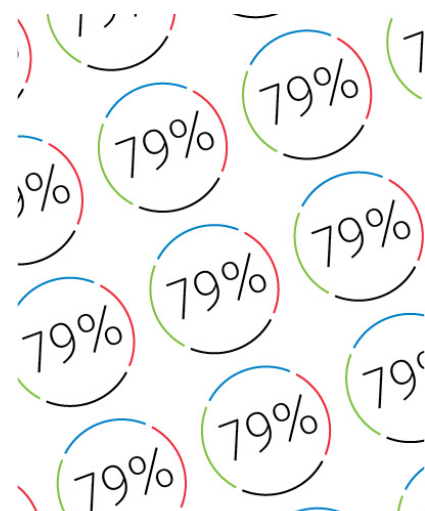
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This entry was posted on Monday, August 31st, 2020 at 9:27 am and is filed under [Case Law](#), [Germany](#), [Injunction](#), [SEP](#)

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