Kluwer Patent Blog

The other “saisie” : the saisie conservatoire in France to recover evidence for foreign proceedings

Matthieu Dhenne (Ipsilon) · Tuesday, March 14th, 2023

Many readers of this blog are familiar with the French *saisie-contrefaçon*, which consists of the seizure of allegedly infringing products and all related documents, but requires a writ of summons within one month of the *saisie* (e.g., here). Few of the same readers have probably heard of the protective seizure (“*saisie conservatoire*”), which allows similar measures to be authorized in the absence of infringement and which does not require a writ of summons within one month of the seizure. Indeed, according to Article 145 of the French Code of Civil Procedure, “*if there is a legitimate reason to preserve or establish before any trial the proof of facts on which the solution of a dispute may depend, legally admissible investigative measures may be ordered at the request of any interested party, on request or in summary proceedings*“.

However, a recent case between Philips and Thales provides a good illustration of the use that can be made of this kind of seizure in patent litigation (Tribunal judiciaire de Paris, 13 September 2022). In this case, infringement actions for GSM standard essential patents and a discovery procedure had been initiated in the United States by Philips against Thales after unsuccessful FRAND negotiations. Thales, which wanted to prove the abusive behavior of Philips during these negotiations, was authorized to carry out a *saisie conservatoire* in France to recover documents that could prove the alleged abuse. Philips subsequently sued Thales to have the order retracted. This claim was dismissed by the judge.

The decision is interesting in that the judge specifies the conditions under which a *saisie conservatoire* may be admitted and preferred to a *saisie-contrefaçon*. The request must specify the circumstances that justify the derogation from the adversarial principle. In this case, the justification lay in the fact that the documents sought consisted essentially of e-mail exchanges that could, therefore, be easily destroyed.

It should also be noted that the failure to disclose the parallel discovery procedure at the time of filing the request was not considered unfair, since, unlike the *saisie-contrefaçon*, the *saisie conservatoire* does not require the presentation of all the facts but only those that justify the derogation from the adversarial principle.

This example is a reminder that the *saisie conservatoire* can be considered as an alternative to the *saisie-contrefaçon* as soon as we can justify the derogation from the adversarial principle. Such an alternative may seem all the more opportune as it does not require the seized party to be summoned within a month of the operations and the grounds for retractation seem fewer than with a *saisie-*

contrefaçon. However, unlike the latter, the *saisie conservatoire* must always be carried out before any litigation in France.

To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please subscribe here.

This entry was posted on Tuesday, March 14th, 2023 at 8:45 am and is filed under Case Law, France, Trade secrets
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.