

**Report Q204**

in the name of the Bulgarian Group  
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**Liability for Contributory Infringement of IPRs**

**Questions**

**1) Analysis of current legislation and case law**

- 1) *Does your national law provide for liability for contributory infringement of IPRs, in respect of the offering or supply of means for working an invention, for enabling illicit commercial use of a trademark, for making a copyrighted or design protected product, etc.?*

The Bulgarian Patent Law does not provide for liability for contributory infringement in case of the offering or supply of means for working an invention. Only the use of the subject matter of the claims constitutes an infringement. But, according to the Art. 28 para 2 of the Patent Law, in case of convicting court decision for infringing action, upon a plaintiff's request, the court may order reprocessing or destruction not only of the infringing articles, but also of the means with which the infringement was carried out. The Law does not provide who is the owner of the means with which the infringement was carried out.

The Bulgarian Trademark Law (Art. 73 para 2) provides that the manufacture of means specially intended or adapted for reproduction of the mark, or the possession or stocking of such means, if the person who carries on those activities knows or has good reason to know that the means serve or will serve for the manufacture of goods or of a material on which the mark to be affixed without the consent of the proprietor of the mark, constitutes an infringement. These means may be subject of destroying.

The Bulgarian Design Law (Art. 57 para 1 p. 4) provides that the means with which the infringed design product was carried out may be subject of destroying.

- 2) *If so, is it a condition for such liability that the means supplied are actually used by another (the person supplied) for committing acts that amount to direct infringement of the IPR in the same country (or in another country where there is a corresponding IPR)? Are there any additional conditions that apply in such cases?*

No, there are not any additional conditions that apply in such cases.

- 3) *If it is not a condition for liability for contributory infringement that the means supplied are actually used by another (the person supplied) for committing acts that amount to direct infringement in the same country (or in another country where there is a corresponding IPR), is it then, on the other hand, a condition for such liability, for example*

- *that the means offered and/or supplied were suitable to be put into an infringing use;*  
No.

- *that the means relate to an essential, valuable or central element in the invention or product or service that constitutes direct infringement;*  
No.
- *that the means offered and/or supplied were actually intended for such use on the part of the person supplied;*  
No.
- *that the means offered and/or supplied were intended to be put to that use in the country in which they were offered or supplied;*  
No.
- *that, at the time of offering and/or supply of the means, the suitability and intended use were known to the supplier or were obvious under the circumstances; or*  
Yes, only in the Law on Trademark.
- *that, to the extent the means are staple commercial products, the supplier induces the person supplied to infringe directly?*  
No.

*Are there other conditions? Please respond separately for patents, trademarks, designs, copyright etc., if the rules differ from each area of IPR to the other.*

No, there are not any other conditions.

- 4) *Are the rules concerning contributory infringement set out in the laws protecting IPR?*  
Yes, only in the Bulgarian Law on Trademarks Art. 73 para 2.
- 5) *If such protection is not set out in the laws protecting IPR, does it follow from generally applicable principles of e.g. tort law?*  
No. Only the Bulgaria Penalty Codex - the Art.172 provide penalty actions, but not against the **contributory** infringer for mark, design rights or new plant varieties, but provides penalty for persons having matrix for reproduction of material bearer of author's rights.
- 6) *What are the legal consequences of holding an act to be a contributory infringement of an IPR, in particular:*
- *can the IPR owner obtain injunctive relief to the same extent as in case of direct infringement?*  
Yes, but only for trademark infringements in case of informed infringer.
  - *can the IPR owner obtain damages and other compensation to the same extent as in case of direct infringement, or only relative to the contributory infringer's contribution?*  
Yes, but only for trademark infringements in case of informed infringer.

## **II) Proposals for substantive harmonisation**

- 7) *Should measures generally be available against acts that qualify as contributory infringement of IPRs, as defined in these Working Guidelines?*  
The measures against the acts that qualify as contributory infringement of IPRs, as defined in these Working Guidelines, should be available.
- 8) *If so, what should be the conditions for holding an act to be a contributory infringement of an IPR?*

At minimum protection of essential parts for a patented product or design rights, as well as printing of labels.

9) *Should the conditions be different for different kinds of IPRs? Why?*

It will be very useful if the conditions be uniform for different kinds of IPRs in order to simplify the procedural actions. This is of importance in cases of infringements of several IPRs by one and the same product.

10) *What should be the legal consequences of holding an act to amount to contributory infringement of an IPR, in particular?*

– *Should the IPR owner be able to obtain injunctive relief to the same extent as in case of direct infringement?*

No, only relative to the contributory infringer's contribution in case of knowledge for the infringement.

– *Should the IPR owner be able to obtain damages and other compensation to the same extent as in case of direct infringement, or only relative to the contributory infringer's contribution?*

Only relative to the contributory infringer's contribution.

11) *Should the legal consequences be different for different kinds of IPR? Why?*

The uniform rules will be more useful.

12) *Does your Group have any other views or proposals for harmonisation in this area?*

No, at the present moment we don't have any suggestions.