

## **Report Q204**

in the name of the Egyptian 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.?*

Except as provided under paragraph (4) below, Egypt's IPR Law No. 82 of 2002 does not contain any provision with respect to contributory infringement. However, general civil law liability rules as well as the rules regarding unfair competition under the Commercial Code of 1999. Under Civil law and Commercial Code (if applicable), Egyptian law provides for liability for contributory infringement of IPRs in this respect; provided, the offeror or supplier of means for working a patentable invention must have the intention, while offering or supplying such means, to help another party to directly infringe the rights of a patent owner.

- 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?*

As regards civil liability, it does not suffice to prove bad faith to establish liability, offering or supplying the means for direct infringement of IPR must result in actual infringement of IPR. If an undertaking, U1, domiciled in Egypt supplies means to another undertaking, U2, domiciled in Syria for infringing protected IPRs in Egypt, U1 will not be held liable until U2 has actually infringed the IPR in Egypt. This is true even if the intention was to help in directly infringing an IPR, but the act of infringing did not take place, for whatever reason.

- 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;*
  - that the means relate to an essential, valuable or central element in the invention or product or service that constitutes direct infringement;*
  - that the means offered and/or supplied were actually intended for such use on the part of the person supplied;*
  - 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;*

- 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
- that, to the extent the means are staple commercial products, the supplier induces the person supplied to infringe directly?

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.

Not Applicable. See 1 and 2 above.

4) *Are the rules concerning contributory infringement set out in the laws protecting IPR?*

Although no specific reference to contributory infringement is stated in these provisions:

- i) Article 51 of Law 82 of 2002 permits without prejudice to the protection granted with respect to designs integrated circuits, any person without license from the right owner to copy or commercially use (including importation, selling or distribution) of designs integrated circuits containing protected designs or goods which are part of the designs integrated circuits, if the act is committed by a person who have no knowledge or who could not have known at the time of committing the act that such designs integrated circuit or such goods contained a protected design.
- ii) Article 181 regarding copyrights and neighbouring rights provides that “Without prejudice to any severer penalty provided for in any other law, any person committing one of the following offences shall be penalized by imprisonment for not less than one month and a fine of not less than five thousand Egyptian pounds, and not exceeding ten thousand Egyptian pounds, or either of both penalties.

Seventh:

Infringing any moral or financial right of copyright or neighbouring right provided for in the law.

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?*

Protection is based on general civil law liability rules as well as the rules regarding unfair competition under the Commercial Code of 1999. Article 163 of the Egyptian Civil Code lays down the conditions for a tortious act, namely: wrongful act, damage, and proximate cause. If all three conditions are met, the tortfeasor is liable to compensate the owner of the IPR.

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?
- 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?

The IPR owner may obtain injunctive relief to the same extent as in case of direct infringement, if such injunctive relief is found necessary by the court. The IPR owner can obtain damages and other compensation. Article 169 of the civil code states that were the act is committed by more than one tortfeasor, they shall be jointly and severally liable for compensation, unless the court determines different ratios. In the present case, it is likely that the court will apply “relative contribution,” whereby the indirect infringer will only compensate for the part equivalent to his contribution in the infringement.

## **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 Egyptian group takes the view that measures against acts that qualify as contributory infringement should generally be available if the act is committed by a person who have knowledge of the fact that an infringement is being committing.

- 8) *If so, what should be the conditions for holding an act to be a contributory infringement of an IPR?*

The main condition is that of knowledge that the act being committed is an infringement.

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

No, the Egyptian Group does not see that different conditions should apply.

- 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?*
- *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?*

The Egyptian Group agrees that the IPR owner should be able to obtain injunctive relief to the same extent as in case of direct infringement. The infringer should be jointly and severally liable for compensation, unless the court determines different ratios.

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

No, the Egyptian Group does not see that different conditions should apply.

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

The Egyptian Group believes that the requirements for contributory infringement for all IPRs should be set clearly in a treaty.