

**Report Q204**

in the name of the Indonesian Group

**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.?*

Our national law does not provide provision on liability for contributor, infringement of IPRs, whereas there is no difference between direct and indirect infringement.

- 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?*

We adopt the territorial system.

- 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;*

The meaning "offered" is considered an infringement while the mean of "supplied" is not considered an infringement.

- *that the means relate to an essential, valuable or central element in the invention or product or service that constitutes direct infringement;*

The means relate to an essential valuable or central element in the invention or product or service that constitutes direct infringement is considered an infringement.

- *that the means offered and/or supplied were actually intended for such use on the part of the person supplied;*

The means offered an or supplied were actually intended for such use on the part of the person supplied is considered an infringement.

- *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;*

The means offered and or supplied were intended to be put into that use in the country in which they were offered or supplied is not considered an infringement, if there is no IP Protection.

- *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*

At the time of offering and supply of the means, the suitability and intended use were known to the supplier or were obvious under the circumstances is considered an infringement.

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

To the extent the means are staple commercial products, the supplier induces the person supplied to infringe directly is considered an infringement.

*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.*

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

Please see point I.1.

- 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?*

Affirmative, that since the protection is not set out in the IPR Laws it follows the general applicable principles.

- 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, the injunctive relief is possible to be obtained by IPR? Laws, however it is not yet enforceable.

- *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, the IPR owner may obtain damages and other compensation.

## **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?*

We are of the opinion that it is necessary to have a measure available against acts that qualified as contributory infringement at IPRs. We support the idea.

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

The conditions for holding an act to be a contributory infringement of an IPR is a will full act whereas the undertaker has sufficient knowledge but still committed the contributory infringement.

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

The Condition depends on the obviousness of the infringement act itself without infringing others IP Rights.

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?*

Yes, the IPR owner should 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?*

Yes, the IPR owner should 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. However the amount depends on the extent as referred in point 9.

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

Yes, as each IP Rights have different laws for the protection of the Right.

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

The Group has not yet have proposal for harmonization in this area.