Latvia
Lettonie
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Report Q204

in the name of the Latvian Group
by Ruta OLMANE

Liability for Contributory Infringement of IPRs

Questions

I) 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 laws provide liability for contributory infringement only for patent rights and copyrights. National legislature does not provide special regulations for liability for contributory infringement for trademarks and designs.

The Patent Law prescribes that liability comes into effect if a person supplies or offers for supply essential elements of the patented product, if a third person knew or at certain circumstances should know that such elements are useful and meant for working of an invention.

The Copyright law envisages liability of intermediary, the services rendered by who are used with a purpose to infringe the rights of copyrights or neighboring rights subject or who enables such 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?*

Our national laws do not provide any regulation regarding this condition.

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;*

Our national laws do not provide any regulation regarding this condition.

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

The Patent Law prescribes that liability incurs only in such a case, when a person supplies or offers for the supply essential elements of the patented product.

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

  Our national laws do not provide any special regulation regarding this condition.

– *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;*

  Our national laws do not provide any special regulation regarding this condition.

– *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*

  The Patent Law prescribes that the third persons knew or should know under the certain circumstances that such elements are useful and meant for working of an invention.

  The Copyright law does not prescribe distinctly that the intermediary should know that its rendered support is aimed to direct infringement of copyrights or neighboring rights. But the Law prescribes if the intermediary does not act properly, namely, after receipt of warning notice do not prevent unlawful use, the copyrights or neighboring rights subject or its representative is entitled to act against the intermediary.

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

  Our national laws do not provide any special regulation regarding this condition.

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?*

Yes, but very narrowly and only regarding contributory infringement of inventions and copyrights.

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?*

Absence of any practice regarding the liability for contributory infringement, does not allow the Group to conclude whether any generally applicable principles could be enforced in this regard.

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?*

  Group considers that injunctive relief could be obtained.

– *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?*

  Group considers that it would not be possible to obtain damages and other compensation to the same extent as in case of direct 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?*

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

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

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?*

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

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