

Report Q204

in the name of the Paraguayan 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.?*

National law does not provide for liability for contributory infringement of IPRs.

- 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?*

Not applicable.

- 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.

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

Rule concerning contributory infringement is not set out in the Laws protecting IPRs.

- 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?*

Eventually, protection does follow from generally applicable principles, but it will depend exclusively on the judge will when analyzing acts and facts, especially in the penal field since, we believe, in the civil will be impossible.

- 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 legal consequences will depend exclusively on the judge will when analyzing acts and facts, but we believe that it will be very difficult since we do not have specific laws in this regard.

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?*

Considering that in the national laws liability of contributory infringing is not provided, adoption on new rules should be established in International Agreements. Patent Law does not establish penalties; therefore, establishing responsibilities would be more difficult in the civil field regarding patents of invention.

However, in the field of trademarks and copyright we believe it would be more feasible to impose rules since there are penalties that could be eventually modified in order to include responsibility for contributory infringement.