

Standard Essential Patents

Dr. Jörg Witting & Christian Harmsen

CHRISTIAN HARMSSEN: There has been a lot of patent litigation in Germany involving standard essential patents. The big issue in this is can the patent owner request an injunction against the patent infringer and there has been an important decision by the Federal Supreme Court in 2009 deciding that indeed the user has to give and accept the license offer to the patentee and if he does this and meets other criteria then indeed an injunction cannot be claimed and in this case lawyers after that been widely and strictly applied by the law instance courts in Germany.

JORG WITTING: And then in parallel some time ago the European Commission in Brussels stepped in and started two very important investigations which led to decisions handed down earlier this year and there the commission applied a slightly different approach which rather looks at the willingness of the standard user to negotiate or to take a license.

CHRISTIAN HARMSSEN: In Europe there are many patent cases pending currently where this issue is of importance.

The Regional Court of Dusseldorf has indeed referred one of our cases for our client Huawei to the European Court of Justice, requesting the ECJ to decide how the European law has to apply on this scenario.

JORG WITTING: And then European Court of Justice will then hand down general principles on this very issue which national courts throughout Europe will then have to apply to further shape the case law and specify the specific reconditions.

The questions actually centered around the problem that the German Courts had a certain approach and the European Commission had a wider, more flexible approach it is in principle, the devil is in the detail, but in principle it is about the issue whether a specific license agreement and some further preconditions have to be fulfilled by the standard user on one side or it is sufficient to demonstrate willingness to negotiate and take a license on the other side.

CHRISTIAN HARMSSEN: The hearing was quite big and very formal besides the parties the European Commission and two member states Finland and the Netherlands that gave their pleadings and it was a big audience 100 spectators judges from member states representatives of high tech companies, lawyers and other interested parties it was quite a remarkable day.

In high tech industries standards are of big importance, this case is about the interface between IP monopoly rights on one side and competition law on the other side and this case will give guidance on the limitation between both.

JORG WITTING: And I think that we at Bird & Bird are particularly well placed to blend together expertise from our strong IP practice with our knowledge on European Competition Law to serve clients exactly at that interface between IP and competition.

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This document is a transcript of an edited video recorded in September 2014.