

Client Alert

Towards Easier Access to Preliminary Injunctions for Patent Holders in the EU

May 4, 2022

On April 28, 2022, the Court of Justice of the European Union (CJEU) handed down a judgment that is expected to significantly improve the chance of patent owners being granted a preliminary injunction before national EU patent courts, and, most likely, also before the future divisions of the Unified Patent Court ([UPC](#)).

The CJEU's judgment is the result of a referral for a preliminary ruling from the Regional Court of Munich (RCM), in the context of preliminary injunction proceedings introduced by patent owner Phoenix Contact against alleged infringer Harting Electric. The RCM had reached the preliminary conclusion that the invoked patent was valid and had been infringed by the defendant. It therefore wished to grant the patent owner a preliminary injunction.

However, settled case law from the Higher Regional Court of Munich (HRCM) prohibits on principle the grant of a preliminary injunction if a patent has not been the subject of an opposition decision by the European Patent Office (EPO), or of a decision by the German Federal Patent Court in invalidity proceedings, confirming the validity of the patent.

Facing this conundrum, the RCM asked the CJEU for a preliminary ruling on whether this restrictive HRCM case law was compliant with EU law.

The CJEU's response was crystal clear. The Enforcement Directive 2004/48 adopted by the EU aims at harmonizing to a minimum extent rules relating to enforcement and infringement of intellectual property rights across the Member States so as to ensure a high level of protection for IP rights. In particular, Article 9 of the Enforcement Directive provides that Member States must ensure that courts may issue a preliminary injunction against alleged infringers. As a result, there must be provisional measures available under national law that enable an infringement to be immediately terminated without awaiting a decision on the merits.

The CJEU found that the requirement relied upon in the above-mentioned HRCM's case law deprives Article 9 of the Enforcement Directive of any practical effect. Said case law is therefore contrary to EU law and national judges must as a consequence refrain from applying it when interpreting their national rules implementing the Enforcement Directive.

In other words: EU national judges may not be prohibited from granting preliminary injunctions to terminate the apparent or imminent infringement of a seemingly valid patent just because such patent has not yet been confirmed in EPO opposition or invalidity proceedings before their national courts.

This judgment will certainly and rapidly bring about significant changes in German patent litigation, as alleged infringers will no longer be able to rely on this strategic tool to protect themselves from preliminary injunctions.

Conversely, this may render lower patent courts even more patent-friendly, much like in Germany's neighboring countries.

On a broader level, this judgment strengthens the legal arsenal available to patentees to enforce their rights in the EU. It combines with the CJEU judgment in the *Bayer / Richter Gedeon* case of September 12, 2019, to provide patentees with a reasonably low threshold to obtain preliminary injunctions while limiting their potential liability to a minimum should the preliminary measures be revoked. In the medium term, the judgment discussed in this alert also further enhances the EU harmonization of intellectual property enforcement. It promotes increased legal certainty as to the practices of the future judges of the UPC (which is expected to become operational at the end of the year), when examining applications for preliminary injunctions brought before a regional or local division of the UPC.

To discuss how our firm can help you examine the effect of this judgment on the enforcement of your patent rights in the European Union, please don't hesitate to reach out to [our patent litigation team in Brussels](#).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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