

SPEEDY AND PROPER LITIGATION ON INTELLECTUAL PROPERTY

The 3rd JIPA INTERNATIONAL PROPERTY SYMPOSIUM

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EUROPE

- **HARMONIZATION OF IP RIGHTS**
- **CREATION OF EU RIGHTS – OHIM**
 - * **TRADEMARKS**
 - * **DESIGNS**
- **EUROPEAN PATENT CONVENTION (EU-PLUS)**

LITIGATION IN EUROPE

- **BRUSSELS CONVENTION (REGULATION) :
COMPETENCIES**
- **LITIGATION IS BASICALLY NOT AN EUROPEAN
ISSUE**

TENTATIVE CHANGES (1)

- **PROPOSAL : DIRECTIVE ON MEASURES AND PROCEDURES TO ENSURE THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS : HARMONIZATION**

- a) **Evidences**
- b) **Provisional Measures**
- c) **Correctives Measures**
- d) **Damages and Legal Costs**
- e) **Publicity Measures**
- f) **Administrative Cooperation**

TENTATIVE CHANGES (2)

COMMUNITY PATENT

- **BASE : NICE TREATY (Art 229A – 225A)**
- **PROPOSAL : COMPAT REGULATION 08/2000**
COUNCIL DECISION 23/12/2003
 - * **2010 – Transition**
 - * **European Court of Justice**
 - * **Validity – Infringement**
 - * **Damages - Penalties**

WISHES OF THE INDUSTRY

- **ONE COURT SYSTEM**
- **PANELS INCLUDING TECHNICAL JUDGES**
- **VALIDITY AND INFRINGEMENT TOGETHER**
- **« SAISIE CONTREFAÇON »**
- **LANGUAGE OF PATENT AS GRANTED**
(English – French – German)

FUTURE

?

PROCEDURE COLLECTION OF EVIDENCES (1)

- **NO UNIQUE EUROPEAN SOLUTION**
- **GERMANY : VERY DIFFICULT TO ACCESS TO EVIDENCE**
- **UK : DISCOVERY :**
 - * **Efficient Way**
 - * **Time**
 - * **Cost**

PROCEDURE COLLECTION OF EVIDENCES (2)

- **SAISIE CONTREFACON**

- * Request by Patent Owner for a Court order (alleged infringers no aware)

- * Order granted by the Judge specifying

- Place for seizure

- Name of Company

- Right to seize : → Samples

- Stock

- Copy of documents

- Take note of Comments of the « victim » of seizure

PROCEDURE COLLECTION OF EVIDENCES (3)

- **SAISIE CONTREFACON**

- **Participants to seizure :**

- **Bailiff**

- **Attorney or Patent Attorney**

- **Police**

- **Locksmith (possible)**

COMMENTS ON SAISIE CONTREFACON (1)

- **EFFICIENT**
- **NOT TOO EXPENSIVE**

COMMENTS ON SAISIE CONTREFAÇON (2)

- **QUID TRADE SECRET PROTECTION ?**
 - * **Bailiff presence**
 - * **Attorney or Patent Attorney : → Independant**
→ Confidentiality
 - * **Right for the Defendant to require confidentiality for certain information – Judge decides**
 - * **Right to sue for the Company victim of seizure if seizure excessive**
 - * **Right for Judge to ask for Financial guarantee if seizure of stock.**