

Resolution

Question Q204P

Liability for contributory infringement of IPRs – certain aspects of patent infringement

AIPPI

Observing that:

- (a) Many jurisdictions acknowledge contributory infringement of IPRs; however, the term contributory infringement of IPRs has different meanings in various jurisdictions and may also depend on the type of IPR involved.
- (b) In its Resolution Q204 of Boston (2008), AIPPI adopted certain recommendations in relation to the harmonization of the basic principles for contributory infringement of IPRs.
- (c) This resolution relates to certain aspects of contributory patent infringement, where the term "contributory patent infringement" as referred to in this Resolution is defined in the same sense (referable to patents) as "contributory infringement" has been defined in Resolution Q204, recital b), and reads (referable to patents) as follows: the term contributory patent infringement has been defined so as to comprise only the form of indirect infringement consisting in the offering or supply of means suitable for committing an act that is a direct patent infringement; contributory patent infringement shall not include other acts known as indirect infringements, such as inducement or the provision of other assistance than the offering or supply of means for committing a direct patent infringement.
- (d) Among the jurisdictions acknowledging contributory patent infringement, there is diversity as to which conditions must be met in order for an act to qualify as an act of contributory patent infringement.
- (e) Among the jurisdictions acknowledging contributory patent infringement, there is diversity on the influence of cross border aspects on contributory patent infringement.
- (f) In its Resolution Q134A AIPPI took the position that, in respect of patents, indirect infringement does not presuppose that an act of infringement is actually committed by another (the direct infringer).

Resolves that:

1. The resolutions in paragraphs 1) to 7) of Resolution Q204 are confirmed in respect of contributory patent infringement.
2. It should be a condition for the supply or offering of means to qualify as contributory patent infringement that the means supplied or offered are suitable for committing an act that is a direct patent infringement.

3. It should be a condition for the supply or offering of means to qualify as contributory patent infringement that the person supplying or offering such means knows, or it is obvious in the circumstances, that these means are suitable and intended for putting the invention into effect.
4. It should be a condition for the supply or offering of means to qualify as contributory infringement that such means relate to a substantial element of the invention; what is a substantial element should be determined on the basis of the ordinary principles of claim construction and patent interpretation.
5. The term "substantial element of the invention" is not limited to those elements of the invention by which the invention distinguishes itself from the prior art. An element of a patent claim that contributes directly, through the function it performs in the claimed subject matter, to the result of the invention is a substantial element.
6. To the extent that the means supplied or offered are staple commercial products, the supply or offering of such means does not constitute a contributory patent infringement except when the person supplying or offering such means induces the person supplied to commit infringement.
7. There should be no special rules applying to offers transmitted by electronic devices or via the internet.
8. It need not be a requirement for contributory patent infringement that the intended use of the means offered or supplied would take place in the country where the means are supplied or offered.
9. Injunctive relief should in principle be available against acts of contributory patent infringement to the same extent as against direct infringement. This should include an injunction, if appropriate under national law, on manufacture of the means supplied or offered, if those means can exclusively or mainly be used for patent infringing purposes.