

EPI LADY Mock-Trial

„German vs. English Approach?“

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(Former Judge at the Düsseldorf Court of Appeals (until March 2017))

EPLIT

Munich

12. April 2017



**UNI
FREIBURG**



January 2016: Local
Division of the UPC in
Munich

October 2016: Local
Division of the UPC in
London



Trial based on the famous Improver v Remington litigation:

Patent-in-suit:

Electrically powered device comprising (...) a helical spring comprising a plurality of adjacent windings (...)

Attacked embodiment:

... cylindrical rubber rod with slits which is capable of performing the same task



Case Management Conference in the morning

Some issues:

- composition of the judge's panel
- procedural issues
- Venue
- Bifurcation

Trial in the afternoon

- Validity
- Infringement
- remedies



Panel of the UPC Munic Local Division:

- **Mr Zigann** (Landgericht in Munich)
- **Mr van Walderveen** (District Court in The Hague).
- **Prof Haedicke** (Oberlandesgericht in Düsseldorf / Freiburg Univ.)
- **Mr Klein** as Technical Judge (formerly of the Boards of Appeal of the European Patent Office).

German majority of judicially trained judges!

Counsel:

- The patent proprietor was represented by **Rainer Beetz** (Sonn and Partner, Austria) and **Leythem Wall** (Finnegan Europe LLP, Great Britain).
- The defendant was represented by **Marek Lazewski** (Lazewski Depo and Partners, Poland) and **Jan Stein** (Ipracraft AB, Sweden).



Panel of the UPC London Local Division:

- Mr **Colin Birss** (Patents Court in London),
- Mr **Richard Davis** (Hogarth Chambers)
- **Prof Haedicke** (Oberlandesgericht Düsseldorf/Freiburg Univ.)
- Mr **Walter Holzer** as Technical Judge

British majority of legally trained judges

Counsel:

- The patent proprietor was represented by **Rainer Beetz** (Sonn and Partner, Austria) and *Leythem Wall* (Finnegan Europe LLP, Great Britain).
- The defendant was represented by **Marek Lazewski** (Lazewski Depo and Partners, Poland) and **Koen Bijvank** (VO Patents & Trademarks NL)



Case Management Conference in the morning / some issues:

- How are the judges to be addressed? – Your Honor – Mr./Ms. Chairman!
– My Lord/ My Lady? YOUR HONOR
- Prayers for relief? – When? Which form? UK vs GY
- Injunction to be discussed? – If? When? In the beginning (GY) or end of trial (UK)
- Jurisdiction (national declaration of non-infringement / lis pendens):
YES
- Obligation for referral from local division to central division? NO



Case Management Conference in the morning (cont'd)

- Venue – advertisements in newspapers sufficient? YES
- Use of a technical judge? YES, but with some reluctance in Germany, no such reluctance in UK
- Use of an expert? NO
- Bifurcation? NO (unanimous vote in both trials!)



Trial in the afternoon

- **Settlement request? Only in London!**
- **Validity**
 - Motion during the trial: Manually driven devices are prior art – submission of new documents admissible!?
 - **Admission** of new evidence at the day of the trial?
 - Fairness concept (UK) : no surprise of the other party with this motion vs. duty of court to in principle hear all arguments (Gy)
 - **Use of experts:** Need of an expert in order to define the analytical process to find prior art (UK) vs. no need for expert (Germany)



Trial in the afternoon (cont'd)

- infringement: application of doctrine of equivalence
 - Munich: German judges applied their national doctrines/law as applied in their own domestic courts (Duch judge dissenting!)
 - UK Court: application of DoE: New UPC law is to be applied, no sticking to national traditions!?
 - Both (!) courts found for a patent infringement based on the DoE



Some take-home points / unresolved issues?

- Prayers for relief?
- Costs? How to evaluate value of a claim?
- Influence of the presiding judge:- In how far does he/she set the agenda?
- Limited role of the technical judge?
- Trials without expert? (only in this case or generally?)
- What are experts going to talk about? Limited, pre-defined topics to talk about in German proceedings vs. more lenient approach in the UK!
- Bifurcation is dead!?
- Language issues? Structural disadvantages for non-native speakers?



**Thank you very much for your
kind attention!**

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