

The current referrals to the CJEU

SPCs,

Designs and Trade marks

The current referrals to the CJEU

Pending cases:

- Respect of the IP rights (2004 Directive): 1
- Patents/ SPCs: 3
- Trademarks: 9
- Designs: 1
- Copyright : 3

The current referrals to the CJEU

2004 Directive

Case C-688/17: Bayer Pharma c/ Richter Gedeon

Consequences of the enforcement of the provisional measures,
when later on the IP right (patent) founded non valid

The relation between the Directive rules

(art 9§7 providing for the adequate indemnification)

and the national law governing the general civil liability

- Should the EU countries establish the specific rules for the indemnification resulting from the provisions of the 2004 Directive
- And if so, what is the relation between these rules and the general civil law of the country?

The current referrals to the CJEU

- **Patents / SPS**

Three referrals concerning essentially the relation between the disclosure of the patent and the content of its claims and the product being the object of the SPS.

Case n° C650/17:

- Is the general functional claim sufficient to be a valid base for a SPC, even if the patent doesn't individualize the pharmaceutical product in a specified mode of preparation?
- And what if the particular formulation corresponding to the SPS was developed well after the patent and appears to be a valid invention?

The current referrals to the CJEU

Patents / SPS

Case – 114/18: Sandoz & Hexal c/ Janssen

- Markush claim in the patent:
 - should the "functionally equivalent" elements of the pharmaceutical formulation be clear for the skilled person from the lecture of the claim?
 - or is it sufficient that the element is recognized as belonging to the general category of the functionally equivalent compounds?

The current referrals to the CJEU

Patents / SPSc

Case n° C-673/18: SANTEN c/ INPI

New referral from the Court of Appel of Paris

The question sent to the CJUE concerns the definition of the notion of “different application”

resulting from the NEURIM decision (case C-130/11)

And the Court of Paris suggests various interpretation of this notion:

- New human application following a previous veterinary one?
- New therapeutical field?
- Or simply new formulations, posology etc?

The current referrals to the CJEU

Designs

C-678/18

The question of the jurisdiction having the power to order the provisional and conservatory measures

according to the Regulation on the community designs:

- All national jurisdictions
- or only the jurisdictions qualified as the courts for the community designs?

The current referrals to the CJEU

Trademarks:

9 referrals in total

Case n° C-578/17

Conditions for the registration of a trademark which can be qualified as a color trademark and as well as figurative trademark:

- Necessity to give a precise definition of colors?
- The conclusion of the Avocat General of November 22nd, 2018:
 - against the possibility to register a color trademark as a simple figurative trademark, specifically if the color characteristics should be taken in consideration to appreciate the distinctive character of the trademark
- The Court decision of March 27th, 2019:
 - necessity to give a precise description of the sign to be the object of the valid trademark

The current referrals to the CJEU

Trademarks:

Case n° C-690/17 ÖKO c/ Rudolf Liebe Nacht GmbH&Co, KG

The notion of the infringing use:

- the contentious sign being perceived by the public as “a test seal”

Avocat general on January 17th, 2019:

- the use is infringing, even if the trademark registered for services of “information for consumers and judgments on quality”,
is not registered for the product on which the sign was reproduced, as long as the public perceives it as a “test seal”

The current referrals to the CJEU

Trademarks:

Case n° C-705/17

The effects of the disclaimer related to an element of the trademark

How an element being an object of the disclaimer should be taken in consideration, while operating the assessment of the likelihood of the confusion in relation to other trademark?

Avocat General: March 6th, 2019

- The disclaimer of one of the elements of the prior trademark has no effect on the appreciation of the likelihood of the confusion

The current referrals to the CJEU

Conclusions:

- Various SPCs referrals will have an impact on the EU Commission who works on the Regulation establishing the Unitary (or Community) SPC
- The referrals related to the 2004 Directive are very rare, but one can suppose that they will become more frequent
- The role of the CJEU on the trademark practice is fundamental