ECJ provides more options for forum shopping in connection with Community designs

The European Court of Justice (ECJ) has issued a preliminary ruling stating that all courts with jurisdiction over national designs are also competent to rule on provisional measures under Community designs. This ruling applies to EU trademarks and EU trademark courts too.

The ECJ’s ruling clarifies how Community design courts function, and it facilitates forum shopping for provisional measures on Community designs, allowing cases to be dealt with quickly. It also puts an end to the debate about Dutch implementation of the regulation when it comes to Community design courts. Nationally, the decision means that the District Court of The Hague will no longer have sole jurisdiction over provisional and protective measures on Community designs, and the Court of Appeal of The Hague will no longer be exclusively competent in the related summary proceedings.

Designated Community design courts
Under the European regulation on Community designs, Member States are to designate Community design courts in their territories. These design courts are exclusively competent to rule on legal actions relating to infringements of and the validity of Community designs. The Netherlands government has assigned this exclusive jurisdiction to the District Court of The Hague and the Court of Appeal of The Hague.

Spin Master case in the Netherlands
The jurisdictional scope of Community design courts was originally raised in Spin Master v. High5 at the District Court of Amsterdam, where the court ruled that it had jurisdiction to award provisional measures on Community designs.

While the ECJ’s Advocate General felt that The Hague was exclusively competent under the Netherlands’ implementation of the EU Regulation, the Dutch Supreme Court doubted whether the way the Netherlands had implemented the EU Regulation was correct. Based on this, the Supreme Court requested that the ECJ issue a preliminary ruling. The Supreme Court’s decision to review the case was taken in the interests of legal development and the uniform application of the law. To arrive at its decision, the Supreme Court considered whether all courts and tribunals of a member state had jurisdiction to grant provisional and protective measures, or if this was the sole domain of Community design courts.

ECJ decision brings clarity
The ECJ has clearly expressed its view that while specialisation of courts is beneficial, there is a balance to be struck between specialisation and effective enforcement. According to the ECJ, exclusive jurisdiction over provisional measures limits access to justice and legal protection.

In examining the European regulation on Community designs, the ECJ held that plaintiffs can seek provisional and protective measures on Community designs at any court or tribunal in a member state with jurisdiction over national designs. The ECJ explained that a specialised court system promotes the uniform application of the EU regulation and advances the uniformity of case law. And yet, the ECJ also held that proximity and efficiency were more important than specialisation. This led to its conclusion that other courts in a member state — aside from the designated Community design courts — may rule on provisional measures based on Community designs, so long as they have jurisdiction over provisional measures based on national designs.

Provisional measures are limited in time. In line with this, the ECJ clarified that national court rulings on provisional measures cannot affect later substantive actions on infringement or validity. The Community design courts have exclusive jurisdiction over these actions on substance.