

GERMANY



**Maiwald Patentanwalts
GmbH
Munich**

Stefanie Parchmann

London Agreement and Enforcement Directive implemented

On September 1 2008, the German Act for the Improvement of the Enforcement of Intellectual Property Rights entered into force. It implements the European IP Rights Enforcement Directive (2004/48/EC; IPRED) and the London Agreement. Articles 8a and 8b relating to the latter are effective retroactively as of May 1 2008.

Germany had some home-made difficulties with the implementation of both the Directive and the London Agreement. The original implementation bill of the London Agreement miscalculated the date of entry into force. The implementation into German law of the Directive 2004/48/EC of April 29 2004 missed the implementation deadline by more than two years. This led to Germany being found guilty earlier this year by the European Court of Justice of an infringement of European Community law (EuGH, C-395/07).

Under the London Agreement, Germany entirely waives the translation requirements provided for in Article 65(1) EPC and Article II § 3 IntPatÜG for European patents in respect of which the mention of grant is published on or after May 12 2008 (Article XI § 4 IntPatÜG).

The IPRED implementation offers IP owners a set of sharper tools for use against (potential) infringers. The right of information has been extended to cover a right of information about the origin and distributive channels of infringing products against third parties which themselves are not infringers, such as warehouse operators, haulers and internet service providers. Inspection of goods, processes or documents has been made easier, the only requirement being a sufficient probability of infringement supported by preliminary evidence. In cases of obvious infringement, an inspection claim may even be asserted by preliminary injunction. In such an injunction, the court can specify various details such as the scope of inspection (the Düsseldorf practice developed by jurisdiction in the

wake of BGH-“Faxkarte”).

Finally, additional remedies going beyond the destruction of infringing goods in the possession of the infringer have been introduced. IP owners are now entitled to recall and removal of infringing goods by the infringer – regardless of title or possession of the goods in question. Moreover, destruction of infringing products by the Customs authorities no longer depends on a court’s decision and on explicit consent from the infringer. If the infringer does not object within 10 working days of receiving the notice of confiscation, he is deemed to have consented.

The implementation of the Enforcement Directive and the London Agreement is a significant improvement of the position of IP owners in Germany.