

GERMANY

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Enforcement of IP rights improved

On September 1 2008 a new Act of Parliament has come into effect in Germany providing a considerable number of new and amended regulations on the enforcement of IP rights.

This Act constitutes the implementation of Directive 2004/48/EC issued by the European Parliament and the Council on April 29 2004 (Enforcement Directive) into the German legal system.

As a consequence of this Directive providing for minimum requirements on the enforcement of IP rights, various German law codes related to IP rights had to be changed. All revisions in question are related to provisions dealing with the legal claims given to a patent owner if his patent is infringed.

With regard to the injunctive relief there was no need to implement the Enforcement Directive into German law.

As to the claim for damages, the new regulation in the German Patent Act reflects the requirements set forth by the Enforcement Directive according to which damages may comprise lost profits, any unfair profits and, in appropriate cases, at least the amount of royalties which would have been due. These rules, however, had already been used by German courts as methods for damage calculation.

While a claim for destruction had already been given in German patent law, the patent owner may now also claim a recall or a definitive removal from the channels of commerce unless this would be inappropriate.

The claim for information has become much broader and now also includes third parties. Additionally, detailed provisions on the scope of information to be established are provided.

An important novelty is the claim for submission of documents and inspection, which may enable the patent owner to collect evidence for patent infringement. This regulation mirrors the case law of the German Federal Supreme court as well as the established practice of the most well-

known German patent litigation courts in Düsseldorf.

Another revision deals with the prerequisites and the procedure of a seizure at the border by the Customs authorities.

Lastly, at the request of the patent owner the court may order that the decision be published.