

Munich Court of Appeals Issues Anti-Anti-Suit Injunction in FRAND Case



As a supplement to the [blogpost](#) published a couple of weeks ago on the judgment of the Paris Court of First Instance (Tribunal de Grande Instance) of 8 November 2019 which issued an anti-anti-suit injunction against *Lenovo* ordering that company to withdraw a request for an anti-suit injunction pending before a US Court, Mr Peter Bert (a reader of this blog) shared with me [an article](#) that he wrote concerning a similar case recently put before German courts.

My colleagues Steve Ross and Rebecca Halbach discussed this German case in the latest edition of Van Bael & Bellis' Competition Law Newsletter. I have decided to reproduce their article below.

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Article drafted by Steve Ross and Rebecca Halbach

On 12 December 2019, the Munich Court of Appeals (*Oberlandesgericht München*) (the **Court**) upheld the judgment of

the Munich District Court (*Landgericht München I*) of 2 October 2019 which had granted a preliminary injunction in a case pitting *Continental* (***Continental***), an automobile supplier, against *Nokia* (***Nokia***), a telecommunications company. The Court ordered Continental to withdraw the action for anti-suit injunction which that company had brought against Nokia before the US District Court of the Northern District of California (the ***US Court***) in a patent dispute.

Daimler (***Daimler***) wished to obtain licences for Nokia's European portfolio of standard essential patents (***SEPs***) regarding 4G, 5G and WiFi mobile connectivity technology relevant to the connectivity of cars. On 7 January 2019, Daimler filed a competition law complaint with the European Commission against Nokia alleging that Nokia had not offered the requested technology on fair, reasonable and non-discriminatory (***FRAND***) terms. On 21 March 2019, while the proceedings before the European Commission were still pending, Nokia commenced ten patent infringement cases against Daimler before Düsseldorf, Mannheim and Munich courts. Two Daimler suppliers, both part of the Continental group, joined these suits as third-party interveners in support of Daimler.

On 10 May 2019, Continental brought suit against several defendants, including Nokia, before the US Court for refusing to grant licences on FRAND terms. In this context, on 12 June 2019, Continental applied for, and subsequently obtained, a motion from the US Court to stop Nokia's infringement actions in Germany (that is, an anti-suit injunction).

In response, on 9 July 2019, Nokia filed a motion for an interim injunction in Germany (that is, an anti-anti-suit injunction). On 11 July 2019, the court granted an interim anti-anti-suit injunction which was subsequently confirmed by the Munich District Court on 2 October 2019.

On appeal, in assessing whether to grant the anti-anti-suit injunction, the Court balanced the parties' rights, namely:

(i) Nokia's property rights relating to the SEPs and (ii) Continental's general freedom to bring legal action. In balancing these two interests, the Court concluded that the anti-suit injunction brought by Continental before the US Court would be damaging to Nokia's property rights and that the anti-anti-suit injunction brought before German courts by Nokia would not infringe Continental's general freedom to act (and bring an action). The Court also considered that an anti-anti-suit injunction was the only way for Nokia to protect its exclusive property rights conferred by the patents against the anti-suit injunction motion brought before the US Court.

Furthermore, according to the Court, the action brought by Continental to obtain a judgment ruling on the issue of whether the licensing terms offered by Nokia were FRAND compliant could in any case be raised in the patent infringement case in Germany. Continental was not able to establish that Nokia's rights to pursue the main proceedings in Germany would be sufficiently protected in the US to justify denying an anti-anti-suit injunction. The Court also found that Nokia would be subject to high fines if it acted contrary to the US anti-suit injunction, which justified an urgent response by the German court in the form of an anti-anti-suit injunction.

Finally, the Court rejected a challenge based on public international law and held that any potential extraterritorial effect which would breach US sovereignty was justified by the need to protect the patent rights in Germany. Moreover, the protection of Nokia's exclusive property rights conferred by the patents was justified on constitutional grounds which in the German legal order rank higher than public international law.

Accordingly, the Court ordered Continental to withdraw the motion for an anti-suit injunction which it had brought before the US Court under a EUR 250,000 penalty, as well as detention for up to six months, for each breach of its court order.

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