

QUESTION 156

International Exhaustion of Industrial Property Rights

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Q156

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Resolution

AIPPI

Considering that:

1. In Q 101 (Parallel Import of Patented Products) AIPPI considered certain questions of exhaustion resolving:

The AIPPI resolves that a patentee be able to invoke its patent against parallel import of a patented product, notwithstanding the circumstances under which such product has been put on the market in country B, subject to exception by contractual agreement authorizing import of the product into country A.

The ability to invoke the patent against parallel import of patented products is a logical consequence of the fundamental principle of territoriality of patent rights. The ability to prevent parallel import diminishes the value of patents and the benefits deriving therefrom.

The AIPPI observes that arrangements may exist where a number of countries decide to form a single regional market, in effect defining a single regional territory. In such an arrangement, a requirement for freedom of movement of goods within the single market may lead to acceptance of the legitimacy of parallel imports between countries which are party to the arrangement, provided that those countries together agree among themselves that such a restriction of the rights of a patentee is necessary in the realization of such a single market.

2. industrial property rights (patents, trade marks, designs and plant breeders rights - IPR) are, save for certain exceptions where regional rights are granted, national in scope;
3. different IPR serve different purposes; each IPR should be considered on its own merits;
4. there is no uniform approach to international exhaustion of IPR. Within national regimes different IPR are treated differently, and there are different approaches

between countries in some cases reflecting a heritage of the common law or other approach;

5. countries of the EEA have provided for a system of regional exhaustion, but do not apply international exhaustion; regional exhaustion is applied to bring about an internal market thus limiting IPR to give primacy to the free movement of goods;
6. the issue of international exhaustion raises questions of economics and trade policy; different legal systems, different levels of national wealth and development, state price controls and regulations all play a role in this sphere.

Adopts the following Resolution:

1. The Resolution on Q 101 is affirmed.
2. Considering, inter alia, the differences in economies and in regulatory and legal frameworks, there should be no international exhaustion of IPR, since this would diminish the value and benefit deriving from IPR.
3. Regional exhaustion may be applied in order to foster regional integration of different national economies under a uniform regulatory and legal framework.
4. The adoption of regional exhaustion does not, in itself, justify international exhaustion.
5. In any event there should be no international or regional exhaustion of IPR where a product has been put on the market
 - (a) under a compulsory licence;
 - (b) under state pricing schemes.
6. A trade mark owner should be able to object to further commercialisation where there are legitimate reasons (e.g. the modification of goods or their packaging) to do so.
7. Any consent to commercialisation in another territory is a question of fact. However, there should be no implication that consent to marketing a product in one country or region is consent to marketing in any other country or region.

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