Parallel import of patented products

Question Q101

Parallel import of patented products

Resolution

The AIPPI has considered the question of parallel import of patented products and the ability of a patentee to invoke its patent to block such import. Parallel import of a patented product is defined as the import by a third party of a product, into a country (hereinafter country A) where it falls under the protection of a patent, from another country (hereinafter country B), where it has been put on the market by the patentee or with its consent.

The AIPPI notes that this question relates solely to patents and that it has not considered any other intellectual property rights.

The AIPPI having considered the question of parallel import of patented products adopts the following resolution:

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 inability 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.

* * * * * * * * *