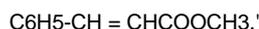


The European Court of Justice:

ANOTHER STEP REGARDING OLFACTORY TRADE MARKS

On 12 December 2002 The European Court of Justice (ECJ) rendered its decision in Case C-273/00 "Sieckmann" where the issue was essentially the question of what is an acceptable representation of an olfactory mark?

Mr. Ralf Sieckmann, a German citizen, applied with the German Patent and Trademarks Office for an olfactory trade mark for various services in classes 35, 41 and 42. The German Trade Marks Act requires the trade mark applied for to be capable of being represented graphically. Thus Mr. Sieckmann filed the following description of the mark: "Trade mark protection is sought for the olfactory mark deposited with the Deutsches Patent- und Markenamt of the pure chemical substance methyl cinnamate (= cinnamic acid methyl ester), whose structural formula is set out below. Samples of this olfactory mark can also be obtained via local laboratories listed in the Gelbe Seiten (Yellow Pages) of Deutsche Telekom AG or, for example, via the firm E. Merck in Darmstadt.



Mr Sieckmann also submitted with his registration application an odour sample of the sign in a container and stated that the scent was usually described as 'balsamically fruity with a slight hint of cinnamon'.

The German Patent and Trade Mark Office refused the olfactory mark as it doubted that the mark could be represented graphically to satisfy the requirements of the German Trade Marks Act and further considered the trade mark to not have distinctive character. Mr. Sieckmann appealed to the Bundespatentgericht, which asked for a preliminary ruling by the European Court of Justice on the issue whether the Trade Mark Directive (89/104/EEC) allows trademarks which cannot per se be described graphically, such as smells or sounds, but can be described by virtue of using certain aids? Secondly



How can you graphically describe for instance the smell of flowers? The European Court of Justice seeks the answer.

the Bundespatentgericht asks which the aids that can be used in order to describe an olfactory mark are?

As an answer to the first question, the ECJ states, that a trademark may consist of a sign which is not in itself capable of being perceived visually, as long as it can be presented graphically by means of images, lines or characters and that the representation is clear, precise, self-contained, easily accessible, intelligible, durable and objective.

To the second question, the ECJ only states, that a chemical formula, an odour sample and a literal description of an olfactory mark are not either alone or combined sufficient graphical representations. The ECJ bases this finding on the reasoning that the formula is not understandable, the sample not durable and the literal description not precise enough.

The ECJ fails to provide rules on which are the acceptable means of presenting an olfactory mark graphically. We hope, that the national Trade Mark Offices find sustainable solutions.

For info, contact associate, Mr. Jan Vidjeskog

===== NOTICES =====



AGREEMENT ON COMMUNITY PATENT

Greece presented its proposal for resolution problems relating to the Community Patent system on February 28, 2003, resulting in a political agreement on the Community Patent. Briefly, the solution means that the Patent court will, after a transitional period be seated in Luxemburg and also that the language issue was solved. We will monitor further developments.

THE COMMUNITY DESIGN

The Office for Harmonization in the Internal Market started receiving Design applications as of January 1, 2003. The applications were accorded the application date April 1, 2003, which is the date of entry into force of the Community Design Regulation.

THE COMMISSION PROPOSES DIRECTIVE FOR COMBATting COUNTERFEITING

The proposed directive concerns remedies for efficiently combatting organized counterfeiting and piracy, which are calculated to cost 17.000 legitimate jobs and millions of euros in Europe each year. The directive imposes obligations on the member states to ensure effective remedies, such as injunctions, securing evidence, compensation for damages and criminal punishment of acts for counterfeiting and piracy.

INNOVATION FOR SALE?

In today's tightening competition, especially in the hi-tech field, many companies tend to want to outsource parts of their operations in order to achieve effectiveness. While hi-tech companies also tend to be young and already have an efficient company structure, it has become more difficult to find operations to outsource. Therefore, the aim is more and more commonly set to outsource the company's key-business areas as well as research and development. Research and development are costly, high risk operations and therefore outsourcing certainly might be advantageous. Outsourcing research and development operations carries its own risks too. The likelihood of leakage of sensitive information increase significantly. Thus outsourcing has to be covered by efficient agreements, including effective and real remedies in case of breaches.

Instead of outsourcing, the advantages of the current economical trends might be exploitable. Many smaller hi-tech companies are facing rough times, as outside financing and investment dries. For such companies, early sales of research and development results and technology transfer agreements are vital. Acquiring technology intensive companies might also be an attractive solution. Technology shopping is presently a realistic remedy for escalating research and development costs, to which companies of today may want to resort.



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