

## **FACTS, ROLES AND BASIC STEPS OF THE CASE**

### **GERMANY**

(Summary)

#### I. The Parties

1. A. is a German limited liability company which is the exclusive licensee of the European Patent n. 521 for a pipe clamp. EP 521 designates 9 States: Austria, Switzerland, Germany, Italy, France, United Kingdom, The Netherlands, Liechtenstein, Spain.

2. B. is a Chinese limited liability company which produces pipe clamps.

#### II. Facts

##### Discover of alleged infringement

On February 25, 2010, during the set-up of the XXX Düsseldorf Trade Fair, starting on March 5, 2010 which A. is taking part in, in order to promote its special pipe clamp, A. discovers that B, is going to display in its stand its own pipe clamps, which A. asserts to be extremely similar to the one covered by EP 521.

##### -The product covered by EP 521

Essentially the invention relates to a pipe clamp, comprising an annular strap with at least one opening that can be closed by a clamping screw, the tip of which is mounted on one side of the opening by thread engagement and the head of which can be passed through and located in a hole in a flange attached to the strap. The head of the clamping screw can be passed axially through the hole in the flange and is retained by a washer that is introduced parallel to the flange, between the flange itself and the head, before tightening takes place and which is formed with a slot open at one end (claim 1 of EP 521).

With the use of this washer the stability of the structure is improved and the structure is fixed in an easy and quick way. The technical contribution of the invention is to be seen as providing a simplification of the closing process for pipe clamps, that can be easily closed with a very short clamping screw.

In the claim it is left open in which direction the washer is introduced before tightening between the head and the flange, being described in the embodiments of EP 521, as an example, only one way in which the introduction of the washer can be realized.

-The allegedly infringing product

The infringing product seems to reproduce all the aforementioned elements of the product covered by EP 521. In particular it uses the means which constitute the mechanism of EP 521, with a tension screw whose head passes axially through the hole in a flange of one half-ring; said screw is retained by a washer with an elongated hole open at one end and which is introduced before tightening takes place.

The washer is fitted with an open slot mounted pivotably by means of a rubber ring on the locking flange; as the screw passes through the flange, it swings up the washer and, after the head has passed through, the washer swings back to its function as impactor plate.

Through specific researches and investigations, A. finds out that B. has advertised, in Chinese, English and German languages its presence at the XXX Düsseldorf Trade Fair on its internet website, where special mention is made to the commercial presentation of its pipe clamps at such event.

A. wants to take photographs of B.'s pipe clamp for the purpose of evidence. However, he is not allowed to do so since the taking of photographs is prohibited on the XXX Düsseldorf Trade Fair.

### III. Starting of Preservation of Evidence Proceedings

Therefore, on February 26, 2010 A. files a petition to the District Court of Düsseldorf asking for the issuance of a court order to grant the inspection for the preservation of evidences. In the petition A. argues that the requirements for the order exist (providing proper evidences), that there is no other way to secure evidence with regard to the prohibition to take photos on the trade fair and that there is urgency to have an ex parte order in the trade fair, which already has been open for a limited number of exhibitors since February 24, 2010.

On the same day the District Court of Düsseldorf orders the inspection of the allegedly infringing pipe clamp at B.'s stand on the XXX Düsseldorf trade fair by a court appointed expert.

### IV. Starting of the Preliminary Injunctive Order Proceedings

After the Preservation of Evidence Order has been executed, on March 2, 2010, A. files a petition to the District Court of Düsseldorf asking for a Preliminary Injunctive Order to prevent B. to show and exhibit, respectively, the allegedly infringing pipe clamp at the

XXX Düsseldorf Trade Fair. In the claim, A. argues that the requirements for the order exist and that there is urgency to have an ex-parte order preventing the exhibition in the trade fair.

Considering B.'s right to be heard on the one hand and the urgency of the case on the other hand, the court decides to give the B. the opportunity to reply to A.'s petition within 24 hours.

After B. has filed his reply the court decides to have a hearing on the case on the March, 4, 2010

#### V. Roles in the Mock Trial

- The Rhetorician (represented by Prof. Dr. Joseph Straus)
- The Claimant (represented by Prof. Dr. Heinz Goddar)
- The Respondent (represented by Dr. Giovanni Casucci)
- The Judge (represented by Dr. Klaus Grabinski)
- The Expert (represented by Prof. Dr. Michele Lupoi)