



European Communities Trade Mark Association

**Enforcement of Intellectual Property Rights with a special focus on
Trade Marks and Patents
15 – 16 December 2009, Stockholm, Sweden**

Reported by Marius Schneider, Chairman of ECTA Anti-counterfeiting Committee, Eeman & Partners, BE and Max Oker-Blom, ECTA Council Member, ECTA Past President and Member of ECTA Law Committee, Adjunct Professor, Hanken School of Economics, FI

The Conference *Enforcement of Intellectual Property Rights with a special focus on Trade Marks and Patents* was hosted by the Swedish Presidency of the EU and introduced by the Swedish Minister of Justice at the conference center Norra Latin in Stockholm.

Margot Fröhlinger (Director at the Commission, DG MARKT, Directorate Knowledge-Based Economy) as keynote speaker stressed the importance of the Community Patent and welcomed the breakthrough realised in this field by the Swedish Presidency. Mrs Fröhlinger stressed, by citing a few illustrative examples, that there is a need for a uniform patent and a unified court system. Margot Fröhlinger mentioned that it is up to the new Commission to decide how to take forward the Draft Directive for Criminal Sanctions, but she believed that the Directive was necessary to fight organised crime which is increasingly involved in counterfeiting and piracy. She stated that the Enforcement Directive will need to be revised to resolve the internet issues and the dissimilar national interpretation. From a non-legislative side the Observatory needed to understand the plague of counterfeiting and piracy and to raise public awareness, since counterfeiting and piracy should be a public concern, just as climate change, since they are a threat to our knowledge based economy.

Piotr Stryszowski of the OECD presented the organisation's study on the economic impact of counterfeiting and piracy of tangible products. The latest update of the study concludes that the trade in counterfeited goods is growing and now worth 250 billion US\$ and approximately 2 % of world trade (available here www.oecd.org/sti/counterfeiting).

Under the title *Infringements on a large scale* Benoit Godart from EUROPOL vibrantly explained the connections between organised crime active in counterfeiting and piracy and activities like money laundering, false documents, contraband, corruption, illegal immigration and labour.

Alvydas Stancikas, Head of the Enforcement Unit of the DG MARKT and Ann-Charlotte Söderlund, Swedish member of the ECTA Anti-Counterfeiting Committee outlined the role and mission of the Observatory. Whereas the Commission representative insisted on the importance of the Observatory, Ann-Charlotte explained the work of the Legal Subgroup of the Observatory, surveying the issues of damages and legal costs, corrective measures, the evidence collection, injunctions, criminal sanctions, and transit. The report is expected in spring 2010 but the first findings show that the Enforcement Directive is not fully implemented in all EU Member States.

Benoit Lory of the Enforcement Unit of the DG MARKT discussed the problems relating to the implementation of the Enforcement Directive and highlighted in particular the disparity



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when it comes to calculating damages. It is particularly difficult to evaluate the negative economic consequences and courts will come to different results. Another difficulty results from differences in obtaining counterfeit seizures for the collection of evidence.

Christian Tournié of the Organised Crime Department of the DG Justice and Security outlined the genesis of the Draft Directive on Criminal Sanctions and showed that with the Lisbon Treaty and the Stockholm Declaration there are new perspectives for this legal instrument. It can be expected that this project will be revived after the entry of the new Commission.

Luc Devigne Head of the Intellectual Property Rights and Public Procurement Unit of the DG Trade and EU negotiator of the ACTA Treaty briefly outlined the status of the international negotiations. His presentation was followed by a presentation by the Deputy Director of the Swedish Ministry of Justice.

Thierry Sueur, Chairman of the Patent Working Group of Business Europe highlighted the role of well educated judges. He welcomed the progress on the Community Patent and stressed its importance for the EU economy.

Prof. Annette Kur of the Max-Planck-Institute explained why, in her view, a more balanced approach was needed with regard to IP enforcement. She militated against the current draft of the future Directive on criminal sanctions and insisted that stakeholders should not use fake medicine to distort the debate.