

ORDER OF THE COURT
OF 18 OCTOBER 1979 ¹

Sirena S.r.l.
v Eda S.r.l. and Others

Case 40/70

Preliminary questions — Reference to the Court — Appraisal by national court — Request by the parties to the main proceedings for the interpretation of a preliminary ruling — Inadmissibility

(EEC Treaty, Art. 177; Statute of the Court of Justice of the EEC, Art. 40; Rules of Procedure, Art. 102)

Article 177 of the EEC Treaty makes provision for direct co-operation between the Court of Justice and the national courts based on a non-contentious procedure irrespective of any steps taken by the parties to the proceedings and in the course of which such parties are merely invited to submit observations within the legal framework set out by the court making the reference.

Since, within the limits established by Article 177, it is thus for the national courts alone to decide on the principle and purpose of any reference to the

Court of Justice it follows that it is also the task of such courts alone to appraise whether they have obtained sufficient guidance from the preliminary ruling delivered in response to their question or to the question of a lower court or whether it appears to them necessary to refer the matter once more to the Court of Justice. Accordingly the parties to the main action cannot rely on Article 40 of the Protocol on the Statute of the Court of Justice of the EEC or on Article 102 of the Rules of Procedure in order to request the Court to interpret judgments delivered in pursuance of the said Article 177.

In Case 40/70

APPLICATION relating to a reference under Article 177 of the EEC Treaty by the Tribunale Civile e Penale [Civil and Criminal Court], Milan, in respect of which the Court delivered a judgment on 18 February 1971 in the proceedings pending before that court between

SIRENA S.R.L.

¹ — Language of the Case: Italian.

and

EDA S.R.L. AND OTHERS

by way of a preliminary ruling on the interpretation of Articles 85 and 86 of the EEC Treaty,

The undertaking Novimpex S.r.l., which is in the course of winding up by the court, has applied to the Court of Justice pursuant to Article 40 of the Protocol on the Statute of the Court of Justice and to Article 102 of the Rules of Procedure for an interpretation of the judgment delivered on 18 February 1971 ([1971] ECR 69) in Case 40/70 on a reference from the Tribunale Civile e Penale, Milan, concerning an action between the undertaking Sirena and other parties including Novimpex.

Novimpex states that it has become necessary to obtain an interpretation of the judgment in Case 40/70 in view of the subsequent development of the case-law of the Court of Justice concerning the exercise of rights of industrial and commercial property embodied in the judgments in Case 192/73, *Hag*, of 3 July 1974 ([1974] ECR 731), Case 15/74, *Centrafarm*, of 31 October 1974 ([1974] ECR 1147) and Case 119/75, *Terrapin v Terranova*, of 22 June 1976 ([1976] ECR 1039), a development which has been pointed out by the Italian courts dealing with the case after delivery of the judgment, following the judgment of the Court of Justice in Case 40/70, by the Tribunale Civile e Penale, Milan, in the *Sirena* case. Novimpex is in fact requesting the Court to clarify the position in an interpreting judgment.

In connexion with this application it should be noted that Article 177 of the EEC Treaty makes provision for direct co-operation between the Court of Justice and the national courts based on a non-contentious procedure irrespective of any steps taken by the parties to the proceedings and in the course of which such parties are merely invited to submit observations within the legal framework set out by the court making the reference.

Since, within the limits established by Article 177, it is thus for the national courts alone to decide on the principle and purpose of any reference to the Court of Justice it follows that it is also the task of such courts alone to

appraise whether they have obtained sufficient guidance from the preliminary ruling delivered in response to their question or to the question of a lower court or whether it appears to them necessary to refer the matter once more to the Court of Justice. Accordingly the parties to the main action cannot rely on Article 40 of the Protocol on the Statute of the Court of Justice or on Article 102 of the Rules of Procedure in order to request the Court to interpret judgments delivered in pursuance of the said Article 177.

In those circumstances the application submitted on 2 August 1979 by Novimpex must be dismissed by the Court of its own motion as inadmissible.

Since no costs have been incurred it is unnecessary to give a ruling hereon.

On those grounds,

THE COURT

composed of: H. Kutscher, President, A. O'Keefe and A. Touffait (Presidents of Chambers), J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, G. Bosco, T. Koopmans and O. Due, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

hereby orders as follows:

The application made by the undertaking Novimpex is inadmissible.

Luxembourg, 18 October 1979

A. Van Houtte
Registrar

H. Kutscher
President