



## Reports of Cases

**Case C-616/10**

**Solvay SA**

**v**

**Honeywell Fluorine Products Europe BV and Others**

(Reference for a preliminary ruling from the *Rechtbank 's-Gravenhage*)

(Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of judgments — Regulation (EC) No 44/2001 — Action for infringement of a European patent — Special and exclusive jurisdiction — Article 6(1) — More than one defendant — Article 22(4) — Validity of the patent called into question — Article 31 — Provisional, including protective, measures)

### Summary of the Judgment

1. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Special jurisdiction — More than one defendant — Jurisdiction of the court of one of the co-defendants — Condition — Connection — Existence of a risk of ‘irreconcilable judgments’ — Implications — Companies established in different Member States, in proceedings pending before a court of one of those Member States, separately accused of committing an infringement of the same national part of a European patent by virtue of their performance of reserved actions with regard to the same product — Included — Assessment a matter for the referring court*

*(Council Regulation No 44/2001, Art. 6(1))*

2. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Exclusive jurisdiction — Proceedings ‘concerned with the registration or validity of patents’ — Implications — Provisional, including protective, measures — Invalidity of a European patent raised, at an interim stage, as a defence to the adoption of a provisional measure concerning cross-border prohibition against infringement — No effect on the jurisdiction of the court before which interim measures have been brought*

*(Council Regulation 44/2001, Arts 22(4) and 31)*

1. Article 6(1) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a situation in which two or more companies established in different Member States, in proceedings pending before a court of one of those Member States, are each separately accused of committing an infringement of the same national part of a European patent which is in force in yet another Member State by virtue of their performance of reserved actions with regard to the same product, is capable of leading to ‘irreconcilable judgments’ resulting from separate proceedings as referred to in that provision. It is for the referring court to assess whether such a risk exists, taking into account all the relevant information in the file.

(see para. 30, operative part 1)

2. Article 22(4) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not precluding, in a situation which concerns an action for infringement in which the invalidity of a European patent has been raised, at an interim stage, as a defence to the adoption of a provisional measure concerning cross-border prohibition against infringement, the application of Article 31 of that regulation.

In the first place, those provisions are intended to regulate different situations and each has a distinct field of application. Thus, whilst Article 22(4) concerns the attribution of jurisdiction to rule on the substance in proceedings relating to a clearly defined area, Article 31 is designed to apply regardless of any jurisdiction as to the substance. Indeed, there is nothing to indicate that either of the provisions at issue can be regarded as general or special in relation to the other. It follows from this that the ambit of Article 31 is independent of that of Article 22(4) of that regulation. Article 31 applies when a claim for provisional, including protective, measures is brought before a court other than the court which has jurisdiction as to the substance, so that Article 22(4), which concerns the jurisdiction as to substance, cannot, as a rule, be interpreted so as to derogate from Article 31 and, consequently, cause it to be disapplied.

In the second place, the court before which the interim proceedings have been brought does not make a final decision on the validity of the patent invoked but makes an assessment as to how the court having jurisdiction under Article 22(4) of Regulation No 44/2001 would rule in that regard, and will refuse to adopt the provisional measure sought if it considers that there is a reasonable, non-negligible possibility that the patent invoked would be declared invalid by the competent court. In those circumstances, there is no risk of conflicting decisions, since the provisional decision taken by the court before which the interim proceedings have been brought will not in any way prejudice the decision to be taken on the substance by the court having jurisdiction under Article 22(4) of Regulation No 44/2001.

(see paras 36, 39, 40, 48-51, operative part 2)