



C/2025/5944

17.11.2025

Request for a preliminary ruling from the Landgericht Düsseldorf (Germany) lodged on 1 September 2025 – Suzhou Anri Child Products Co. Ltd. v Cybex GmbH

(Case C-573/25, Suzhou Anri Child Products)

(C/2025/5944)

Language of the case: German

Referring court

Landgericht Düsseldorf

Parties to the main proceedings

Applicant: Suzhou Anri Child Products Co. Ltd.

Defendant: Cybex GmbH

Questions referred

1. Does the remuneration owed by a defendant against which the adoption of a provisional measure pursuant to Article 3 in conjunction with Article 9(1) of [Directive 2004/48/EC⁽¹⁾ of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, 'Directive 2004/48'] has been requested and against which such a measure has been adopted, and which – represented by legal counsel – has made a request under the second subparagraph of Article 9(4) of the Directive 2004/48 for the revocation or modification of that measure and has exercised its right to be heard in that regard, to its legal counsel for filing that request and exercising on its behalf the right to be heard in the judicial proceedings for review of that request, constitute not only 'legal costs' within the meaning of Article 14 of the Directive 2004/48 but also an 'injury caused by [that] [provisional] measur[e]' within the meaning of Article 9(7) of the Directive 2004/48?
2. If, according to the answer to Question 1, the remuneration of legal counsel is covered by both the concept 'legal costs' within the meaning of Article 14 of the Directive 2004/48 and the concept 'injury' within the meaning of Article 9(7) of the Directive 2004/48, what is the relationship between the claim to the reimbursement of costs under Article 14 of the Directive 2004/48 and the claim to compensation under Article 9(7) of the Directive 2004/48 in relation to the costs of legal counsel which arise directly from the proceedings in which the claim to the reimbursement of costs under Article 14 of the Directive 2004/48 arose?
3. If the remuneration of legal counsel constitutes 'legal costs' within the meaning of Article 14 of the Directive 2004/48 or Question 8 is answered in the affirmative, is it the case that, in proceedings in which, at the applicant's request, a provisional measure has been issued against the defendant in accordance with Article 9(1)(a) of the Directive 2004/48, and the defendant requested a review of that measure in accordance with the second subparagraph of Article 9(4) of the Directive 2004/48 and exercised its right to be heard in that regard, and in which the applicant withdrew its request for the issue of a provisional measure before a final judicial decision had been made on whether the measure initially issued was to be modified, revoked or confirmed in the light of the defendant's observations, is the applicant to be regarded as the 'unsuccessful party' within the meaning of Article 14 of the Directive 2004/48 and is the defendant to be regarded as the 'successful party' within the meaning of Article 14 of the Directive 2004/48?

⁽¹⁾ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45).

4. If Question 3 is answered in the affirmative, are 'legal costs' within the meaning of Article 14 of the Directive 2004/48 'reasonable and proportionate' and, 'as a general rule', to be borne by the unsuccessful party, even if they consist of the legal counsel costs which the successful party has incurred in excess of those corresponding to the standard rates provided for in national legislation, those excess costs having arisen because the successful party's legal counsel charged hourly fees based on an agreement concluded with the successful party rather than on the basis of those standard rates, and is it necessary,
 - I. in the course of that examination, or
 - II. in the course of the examination as to whether 'equity does not allow' an order requiring the unsuccessful party to bear costs that exceed those corresponding to the standard rates in this way, also to take into account:
 - (a) whether, in the field with which the subject matter of the proceedings is concerned, legal counsel usually charge not on the basis of the standard rates provided for in national legislation but according to the number of hours worked or at flat rates which are regularly higher than those standard rates;
 - (b) how the hourly rate agreed with the successful party compares with the average hourly rates charged in the field of law concerned;
 - (c) whether the unsuccessful party has also agreed with its legal counsel a remuneration in excess of that corresponding to the standard rates; and, if so,
 - (d) how high the remuneration agreed by the unsuccessful party with its legal counsel is, and is the unsuccessful party, if it has itself instructed legal counsel to represent it, to be required to raise specific objections to the costs of legal counsel actually incurred by the successful party in order to enable the court to examine whether those costs are 'reasonable and proportionate' or whether 'equity does not allow' an order for their reimbursement?
5. If, according to the answer to Question 1, the remuneration of legal counsel constitutes 'injury' within the meaning of Article 9(7) of the Directive 2004/48 or Question 10 is answered in the affirmative, is Article 9(7) of the Directive 2004/48 to be interpreted as meaning that
 - (a) the expression 'where the provisional measures ... lapse due to any act or omission by the applicant' covers a situation in which the applicant at whose request an interlocutory injunction has been issued in accordance with Article 9(1)(a) of the Directive 2004/48 withdraws that request for the issue of such an injunction after the defendant has made a request under the second subparagraph of Article 9(4) of the Directive 2004/48 and before, following the defendant's request, a final decision has been made as to whether the injunction originally issued is to be modified, revoked or confirmed, or
 - (b) the expression 'where the provisional measures are revoked' covers a situation in which an interlocutory injunction issued in accordance with Article 9(1)(a) of the Directive 2004/48 has been revoked, following a review requested by the defendant pursuant to the second subparagraph of Article 9(4) of the Directive 2004/48, the applicant has lodged an appeal against that revocation and then terminates the proceedings before, following that appeal being lodged, a final decision has been made as to whether the interlocutory injunction is to remain revoked or be confirmed?
6. If at least one of the situations described in Question 5 is covered by Article 9(7) of the Directive 2004/48, does the 'appropriate compensation' to be provided for the injury caused to the defendant by the provisional measure, in accordance with Article 9(7) of the Directive 2004/48, include the legal costs incurred by the defendant in the defence against the request for the issue of the provisional measure, even if these exceed the costs corresponding to the standard rates provided for in national legislation, those excess costs having arisen because the [defendant's] legal counsel charged hourly rates on the basis of an agreement concluded with the defendant rather than on the basis of those standard rates, and is it necessary, in the course of examining that question, to take account of,
 - (a) whether, in the field with which the subject matter of the proceedings is concerned, legal counsel usually charge not on the basis of the standard rates provided for in national legislation but according to the number of hours worked or at flat rates which are regularly higher than those standard rates,

- (b) how the hourly rate agreed with the defendant compares with the average hourly rates charged in the field of law concerned;
 - (c) whether the applicant party has also agreed with its legal counsel a remuneration in excess of that corresponding to the standard rates; and, if so,
 - (d) how high the remuneration agreed by the applicant with its legal counsel is,
and is the applicant, if it has itself instructed legal counsel to represent it, to be required to raise specific objections to the costs of legal counsel actually incurred by the defendant in order to enable the court to examine whether 'appropriate compensation' is to be provided for those costs?
7. Are Articles 70(1) and (6) of [Council Regulation (EC) No 6/2002 ⁽²⁾ of 12 December 2001 on Community designs, 'Regulation No 6/2002'] Regulation No 6/2002 and the second subparagraph of Article 79(7) of [Commission Regulation (EC) No 2245/2002 ⁽³⁾ of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs, 'Implementing Regulation No 2445/2002'] to be interpreted as meaning that, without prejudice to the application of the first sentence of Article 48(1) of the TRIPS Agreement, ⁽⁴⁾ they lay down a definitive rule on whether and to what extent a party to proceedings before the European Union Intellectual Property Office (EUIPO) for a declaration as to the invalidity of a registered EU design may claim reimbursement of the 'costs incurred by [it which are] essential to the proceedings' within the meaning of Article 70(1) of Regulation No 6/2002, with the result that the powers which the Member States confer on the courts on the basis of Article 9(7) or Article 14 of the Directive 2004/48 need not and must not be aimed at granting the party concerned a more extensive claim to reimbursement of the 'costs incurred by [it which are] essential to the proceedings' within the meaning of Article 70(1) of Regulation No 6/2002?
8. If, according to the answer to Question 7, the rules on costs contained in Regulation No 6/2002 and Implementing Regulation No 2445/2002 do not preclude the application of Article 14 of the Directive 2004/48, may the 'other expenses' connected with judicial proceedings in which it falls to be examined, on a request made by the defendant in accordance with the second subparagraph of Article 9(4) of the Directive 2004/48, whether a provisional measure which has been requested and issued against the defendant for infringement of a registered EU design, in accordance with Article 3 and Article 9(1)(a) of the Directive 2004/48 in conjunction with Article 19(1), 89(1) and 90(1) of Regulation No 6/2002, must be revoked, modified or confirmed in the light of the hearing given to the defendant, which are to be reimbursed to the defendant in accordance with Article 14 of the Directive 2004/48, also include the costs of legal counsel which the defendant has incurred in order to file an application at the EUIPO for a declaration of invalidity of the registered EU design?
9. If Question 3 has been answered in the affirmative and, according to the answer to Question 8, the costs of legal counsel incurred by the defendant in its capacity as a party to the invalidity proceedings brought by it before the EUIPO may be included in the 'other expenses' for which it is to be reimbursed as the 'successful party' in the proceedings for the issue of a provisional measure, in accordance with Article 14 of the Directive 2004/48, are the costs of legal counsel incurred in connection with invalidity proceedings 'reasonable and proportionate' and, 'as a general rule', to be borne by the unsuccessful party, even if they exceed those corresponding to the maximum rates laid down in the first subparagraph of Article 79(7) of Implementing Regulation No 2445/2002, and is it necessary,
- I. in the course of that examination, or
 - II. in the course of the examination as to whether 'equity does not allow' an order requiring the unsuccessful party to bear those costs even if they exceed those corresponding to the maximum rates,
also, to take into account the factors listed in Question 4, points (a) to (d), as well as, in addition, the fact that the defendant could have raised a plea as to the invalidity of the registered EU design in the course of exercising the right to be heard guaranteed to it by the second subparagraph of Article 9(4) of the Directive 2004/48, in accordance with the first sentence of Article 90(2) of Regulation No 6/2002?

⁽²⁾ Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).

⁽³⁾ Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs (OJ 2002 L 341, p. 28).

⁽⁴⁾ Agreement on Trade-Related Aspects of Intellectual Property Rights.

10. If, according to the answer to Question 7, the rules on costs contained in Regulation No 6/2002 and Implementing Regulation No 2445/2002 do not preclude the application of Article 9(7) of the Directive 2004/48, may the injury which a defendant has suffered as a result of a provisional measure requested and issued against it for infringement of a registered EU design, pursuant to Article 3 and Article 9(1)(a) of the Directive 2004/48 in conjunction with Articles 19(1) 89(1) and 90(1) of Regulation No 6/2002, and for which it is to be provided with 'reasonable compensation', in accordance with Article 9(7) of the Directive 2004/48, also include the costs of legal counsel which the defendant has incurred in order to file an application at the EUIPO for a declaration of invalidity of the registered EU design?
11. If, according to the answer to Question 5, at least one of the two situations referred to there is covered by Article 9(7) of the Directive 2004/48, and, according to the answer to Question 10, the costs of legal counsel incurred by the defendant in its capacity as a party to the invalidity proceedings brought by it before the EUIPO may form part of the injury for which it is to be compensated in accordance with Article 9(7) of the Directive 2004/48, does the 'appropriate compensation' to be provided in accordance with Article 9(7) of the Directive 2004/48 for the injury suffered by the defendant as a result of the provisional measure include the costs of legal counsel incurred by it in its capacity as a party to the invalidity proceedings conducted before the EUIPO, even if they exceed those corresponding to the maximum rates laid down in the first subparagraph of Article 79(7) of Implementing Regulation No 2445/2002, and is it also necessary to take into account in the course of examining that question the factors listed in points (a) to (d) of Question 6, as well as, in addition, the fact that the defendant could have raised the plea as to the invalidity of the registered EU design in the course of exercising the right to be heard guaranteed to it by the second subparagraph of Article 9(4) of the Directive 2004/48, in accordance with the first sentence of Article 90(2) of Regulation No 6/2002?
12. If, according to the answers to Questions 7 to 11, compensation for the legal costs incurred by the defendant in its capacity as a party to the invalidity proceedings before the EUIPO may, in principle, be claimed under both Article 9(7) and Article 14 of the Directive 2004/48, but the factors listed in points (a) to (d) of Questions 4 and 6 respectively may need to be taken into account, albeit in varying degrees, in the examination of Article 9(7) of the Directive 2004/48, on the one hand, and Article 14 of the Directive 2004/48, on the other, what is the relationship between claim to the reimbursement of costs under Article 14 of the Directive 2004/48 and the claim to compensation under Article 9(7) of the Directive 2004/48 as regards costs which have their direct origin in proceedings other than those in which the claim to the reimbursement of costs under Article 14 of the Directive 2004/48 arose?
