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# German Courts at Epicenter of Global Patent Battles Among Tech Rivals

By **KEVIN J. O'BRIEN**

BERLIN — Is Germany's system of litigating disputes over patents bad for business?

Microsoft's decision to move its European logistics and distribution headquarters to the Netherlands from Germany has generated a debate over patent law here, where it is easy to block the sale of a rival's product even before an infringement claim is verified.

Microsoft cited the potential consequences of a lawsuit brought against it in Germany by Motorola Mobility as a factor in its decision to move its logistics center to the Netherlands from Düren, a small German town near the Dutch border.

Motorola Mobility has asked a court in Mannheim, Germany, to stop Microsoft from distributing its Xbox game consoles and Windows 7 operating system software because they employ a video streaming technology that Motorola claims to own. The court in Mannheim is scheduled to rule on Motorola's request on April 17.

Microsoft is taking no chances. Thomas Baumgärtner, a Microsoft spokesman in Unterschleissheim, Germany, said the possibility that the court in Mannheim might grant Motorola's request and ban the European distribution of the Xbox and Windows 7 had prompted Microsoft to seek a friendlier base.

The company began transferring its operations this year to a location in the Netherlands, which it will not disclose.

"The move is taking place as we speak," Mr. Baumgärtner said last week.

In the last two years, [Apple](#), Samsung, Nokia, Microsoft and Motorola Mobility have either introduced or defended themselves against patent claims in Germany. In one case, Apple won a ruling at a court in Düsseldorf that banned the sale of the Samsung Galaxy Tab 10.1 tablet computer in Germany. Samsung quickly modified the device, releasing the Galaxy Tab 10.1N a month later. Apple sued to block sales of the new device, but a court in Munich denied its request.

In March, Apple won a Munich court ruling against Motorola Mobility because Motorola had used one of Apple's patented photo management technologies on its mobile phones. Motorola said it had modified the devices to remove the infringing technology.

Nokia is suing Apple in Düsseldorf and Mannheim, as well as in Britain and the Netherlands, accusing Apple of using 13 Nokia patents without authorization in its iPhone, iPad and iPod Touch.

The lawsuits, often claiming violations of patents that are considered essential parts of globally recognized mobile technology standards, prompted the European Commission to open investigations this year against Samsung and Motorola Mobility.

Joachim Henkel, a professor of management at the Technical University of Munich, said big international companies were often seeking to exploit the German system for strategic advantage.

Mr. Henkel said the prominent patent and intellectual property disputes in the mobile phone sector, which have also involved courts in Asia, Britain and the United States, were bogging down cutting-edge companies in court.

“All of these infringement cases in Germany, Europe, the United States and Asia are having a hampering effect on innovation globally,” Mr. Henkel said. “Usually, what masquerades as a patent dispute is in actuality a dispute motivated by business strategy.”

The process has turned the German patent courts in Mannheim, Düsseldorf and Munich into some of the most overworked in Europe.

Two-thirds of all patent claims in Europe are now filed in Germany, according to the Munich law firm Meissner Bolte, which does patent litigation. In a sense, Germany has become a destination for fast, effective one-stop patent challenges, much as Britain is for libel and the state of Delaware is for registration of American companies.

While these may benefit German law firms financially, technology experts and smaller German technology firms say the system is being abused to generate nuisance claims.

Determining the substance of a patent claim in Germany can take years. During that time, a rival can effectively be stopped from using a basic piece of technology, often without a legal reason that holds up in the end.

That was the case with Unitedprint, a company in Radebeul, Germany, that does online printing for small and midsize businesses. In 2006, Unitedprint was sued by a competitor, Vistaprint, of Bermuda, which said Unitedprint was using a piece of its patented design technology that enabled users to print business cards and fliers in high resolution.

The German Patent Court rejected Vistaprint's claim in 2007, but Vistaprint appealed. Five years later, on March 22, the German Federal Court of Justice set the matter to rest, siding with Unitedprint. In its ruling, the German court said the European Patent Office, based in Munich, had erred in 1994 when it issued the patent at the center of the dispute.

Although Vistaprint lost on the legal issues, the company did succeed in getting Unitedprint to

change its business operations. Beginning in July 2007, Unitedprint stopped using the patented technology at the heart of the dispute. It has since devised new methods of printing that do not make use of it, but the lawsuits were costly to defend.

Anja Sebald, the head of the legal department at Unitedprint, said it was simple for companies to obtain ownership rights to technology that was already in the public domain.

“It is often too easy to obtain a software patent from the European patent authorities,” she said. “Many times, the people awarding the patents don’t have the direct relevant expertise to make an informed judgment.”

Unitedprint is requesting a six-figure sum in euros from Vistaprint to recover legal costs.

Unlike the German patent system, the American system gives judges the option of awarding proportionate damages instead of granting outright injunctions that ban sales of disputed products in cases where “irreparable harm” cannot be demonstrated.

In Germany, if a court determines that a company legally holds a patent, it can issue an injunction to ban competing uses if asked.

There is no option of granting proportional monetary damages.

Some German businesses are clamoring for changes to better shield themselves from nuisance suits. In 2009, 200 small and midsize businesses created a lobbying group, the Bundesverband Informations- und Kommunikationstechnologie, based in Hamburg, with the goal of altering the legal system.

But the group’s members, which are primarily software and hardware companies, have so far been unable to persuade German lawmakers. In 2005, the German Parliament unanimously approved a nonbinding resolution urging changes to the system to limit abuse. But the call was never followed by action.

The last activity came in 2009, when the German Justice Ministry produced a favorable report on the issue, said Johannes Sommer, the managing director of the association. But since then, there has been little progress, he said.

“The topic is too complicated and the pressure from the German Mittelstand of small and medium-sized businesses has not been strong enough,” Mr. Sommer said.

Microsoft’s decision to move a business unit from Germany could prompt change. Microsoft had been running its European logistics business from Düren for more than a decade under a contract with Arvato, a unit of the German media conglomerate Bertelsmann.

But German businesses are reluctant to wade into a political debate publicly. Klaus Markus, an Arvato spokesman, said Arvato preferred not to comment on Microsoft’s criticism of the German patent litigation system. Likewise, a representative of Bitkom, the leading German

technology industry group, declined to comment.

Both Microsoft and [Google](#), which is acquiring Motorola Mobility, are members of Bitkom.

Mr. Sommer said that fear of nuisance patent claims was the top concern for many businesses.

“We are a very patent-holder-friendly country in Germany, to a fault,” Mr. Sommer said.