

UPC MOCK TRIAL

ACT 2:
Electronic Patent Litigation

IP SUMMIT
PARIS

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UPC Mock Trial Electronic Patent Litigation

Plaintiff: US Company "SMARTCOM"

Defendant: German Company "Channel S"
US Company "GlobalSport"



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The story (1)

- ❑ US company “SMARTCOM” owns EP patent No 462 designating FR, DE, UK, SW, AT, IT filed in 2000
 - for a method of modifying a zone in successive images on a video sequence
 - mainly used for adapting advertisements in video programs for different countries
 - example: football match with advertisements:
 - in FR: camembert
 - in UK: tea



The story (2)

- ❑ A world cup football match in Brazil was broadcasted by German company “Channel S” on French, German, British and Austrian TV
- ❑ German company “Channel S” has a laboratory in Paris for creation of video images
- ❑ “SMARTCOM” strongly suspected that its patented method had been used for creating those images since the broadcasted result looked very similar



The story (3)

- ❑ “SMARTCOM” decided to enforce its patent before the UPC (no opt-out on the patent)
- ❑ European Patent Counsel advised to try obtaining more evidence of infringement
 - since viewing the broadcasted images did not show how the images had been created



The Action (1)

- ❑ “SMARTCOM” decided to file an application to preserve evidence at the local Division located in Paris
 - since “Channel S” has its laboratory near Paris where technical information could be found
 - and “saisie-contrefaçon” is familiar in France
- ❑ Ex parte procedure (Rule 197) justified
 - by reasonable evidence available (broadcasted images)
 - by high risk of destruction of technical information on the method used



The Action (2)

- ❑ The local Division issued an ex parte order for:
 - inspection at the laboratory of “Channel S” in Paris
 - by a French bailiff (following usual French practice)
- ❑ The bailiff’s report showed that the images were not created by “Channel S” but by US company “GlobalSport” (which owns 100% of the shares of “Channel S”)



Rule 192 Application for preserving evidence

1. An Application for preserving evidence may be lodged by a party (within the meaning of Article 47 of the Agreement) (hereinafter "the applicant") at the division where the applicant has commenced infringement proceedings on the merits. If the application is lodged before proceedings on the merits have been started it shall be lodged at the division where the applicant intends to start proceedings on the merits.



Rule 19(7)

7. The defendant's failure to lodge a Preliminary objection within the time period referred to in Rule 19.1 shall be treated as a submission to the jurisdiction and competence of the Court and the competence of the division chosen by the claimant.



The Action (3)

- "SMARTCOM" decided to bring the case to the Central Division (instead of the local Division):
 - in Paris since the patent is in IPC H 04N
 - "GlobalSport" is outside UPC Member States (Art 33-1)
 - to choose English without discussion
 - to have a technical judge from the beginning



Rule 19

Preliminary objection

1. Within one month of service of the Statement of claim, the defendant may lodge a Preliminary objection concerning

- (a) the jurisdiction and competence of the Court,
- (b) the competence of the division indicated by the claimant [Rule 13.1(i)],
- (c) the language of the Statement of claim [Rule 14].



Evidence of alleged infringement

- ❑ Bailiff's report (following order for inspection):
 - ❑ A technical report from "GlobalSport" states:
 - broadcasted images are transformed by a dynamic insertion of memorized advertisements panels
 - using color and shape recognition
 - ❑ Financial documents of "Channel S" state:
 - 5 football matches each year broadcasted in FR, DE, UK and AT
 - for 4 years
 - total advertising of "Channel S": 14 millions euros
 - with an average profit margin of 30%
 - royalties paid to "GlobalSport": 2,4 millions euros



Statement of claim

- ❑ Within 31 calendar days, "SMARTCOM" filed a statement of claim
- ❑ against "GlobalSport" and "Channel S"
 - infringement by importation by "GlobalSport" of images obtained in Brazil by the patented method
 - infringement by broadcasting the images by "Channel S" in FR, DE, UK and AT



Statement of claim

- ❑ Order for determination of damages was requested
 - 14% royalty fee (1 million euros)
 - on the basis of financial information collected during inspection
- ❑ Proposed value for the litigation: equal to the requested damages
- ❑ Request for definitive injunction in all designated States (FR, DE, UK, IT, SW, AT)



Written procedure (2)

- ❑ “GlobalSport” filed a statement of defence within 3 months
- ❑ No infringement:
 - importation of images is not an infringement
 - identification of reference points is not necessary in the “GlobalSport” system
 - the result is obtained essentially by color recognition
- ❑ Counterclaim for revocation
 - patent invalid
 - no technical invention
 - invention lacks inventive step
- ❑ The value of litigation is less than 300K€
 - since the patent is clearly invalid



Written procedure (3)

- ❑ “SMARTCOM” decided not to file a reply to statement of defence
- ❑ But “SMARTCOM” filed a reply to counterclaim within 2 months



Interim procedure

- ❑ A judge-rapporteur was designated by the panel
- ❑ The judge-rapporteur asked the parties:
 - how exactly does GlobalSport obtain the result with color and shape recognition?
- ❑ The Judge-rapporteur decided a value of litigation, including counterclaim, at 10 M€



Oral procedure

- ❑ The oral hearing has been scheduled for today



Claim 1 of EP 462

- Method for modifying the content of a sequence of images representing an evolutionary scene, comprising:
- storing data identifying a non deformable target defined by a set of characterizing points (to be replaced in the scene) and a full pattern representation (pixel by pixel) of the target
 - automatically recognizing at least a subset of characterizing points in each current image (pattern recognition)



Claim 1 of EP 462

- calculating the location, size and perspective of the current representation of the target from the location of the characterizing points in the current image
- transforming the stored full representation of the target in response to this calculation
- comparing pixel by pixel the transformed representation with the current representation in the current image
- replacing the pixels of pattern in the image by the pixels of the stored transformed representation of the target zone



Arguments for revocation

- ❑ Published patent document D1 discloses
 - a video processing system
 - combining two video sequences
- ❑ At least 4 reference points define a polygon in each video frame
- ❑ Pixels addresses in a video frame of the 1st sequence are transformed to represent the polygon in the same 3D location
- ❑ With a stylus and a touch tablet
 - a user positions the polygon in a frame of the 2nd sequence at the location where the transformed frame is to appear



Arguments for revocation

- ❑ Published patent document D2 discloses
 - measurement of size and position of a chroma key area in an analogue TV system
- ❑ The position of each side of the key area within the TV picture is measured



Arguments for revocation

- ❑ It would be obvious for a skilled person
 - to apply the detection of position of key area as taught by D2
 - in the method disclosed in D1
 - so as to arrive at an automatic image insertion as in the claimed invention

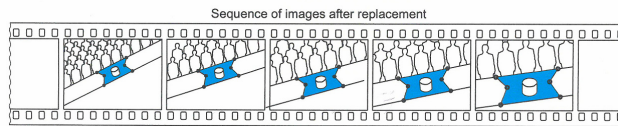
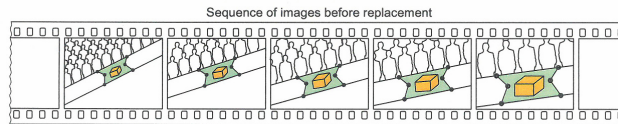
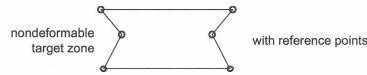


Arguments for infringement

- ❑ Bailiff's report discloses that broadcasted images are transformed by a dynamic insertion of memorized advertisement panels using shape recognition
- ❑ This shows that shape recognition was used to create the images
- ❑ Even if some color recognition was also used, the main feature of the method was shape recognition with reference points



Arguments for infringement



Argument for validity

- D1 discloses an identification of characteristic points by manual adjustment to a target area
- There is no pixel comparison in D1

- D2 only discloses an automatic replacement of chroma key areas
- There is no 3D calculation of any transformation in D2

- It is not obvious to derive the invention from these documents
- No hint to replace color recognition of D2 by pattern recognition of D1

Argument on lack of infringement

- ❑ Importation of images is not an infringement since images are not real products
- ❑ The images are obtained mainly by a color recognition method
- ❑ The method used is a slight modification of D2 where the measured key area is a transformed target on the basis of which the correct transformation is calculated and then applied to the insert pattern



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THANK YOU FOR YOUR ATTENTION

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