

## PARALLEL EPO OPPOSITION & ENGLISH PROCEEDINGS

The English courts have previously shown reluctance to stay infringement proceedings when there are parallel opposition proceedings in the European Patent Office. There is invariably a counterclaim for revocation, so that revocation and infringement are both considered by the court. Despite this, the English courts have considered, especially having regard to the slow process in the European Patent Office, that the patentee would be unfairly treated by a stay of the proceedings.

In a recent case (*Melea Limited v Cinpress Limited*) the English Patents Court refused a stay of proceedings in a case where only validity was in question and despite the fact that a hearing before the Opposition Division was imminent.

The judge commented:

*“I am always deeply unhappy about the fact that EPO appeals are suspensive with the result that, effectively, nothing happens and you do not even get, as it were, a suspended order for revocation, it just all goes off into limbo.”*

The appeal process in the European Patent Office can take several years and, as the judge commented, the patent remains in force in that period, irrespective of the decision of the Opposition Division.

It is possible that the judge would have taken a different view, if an appeal hearing at the European Patent Office was imminent, since a decision by the Boards of Appeal to revoke a patent is final.

In another case (*Buehler AG v Chronos Richardson Limited*), the English Court of Appeal affirmed that the conclusions in an opposition before the European Patent Office were not binding on an English court and the same grounds for invalidity could be raised in an English court.

For further information please ask your usual contact in the firm.

The information in this Newsletter was correct at the date of release. More up to date information is available by contacting Eric Potter Clarkson. All comments contained here are of a general nature and full professional advice should be sought on any specific problem.

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