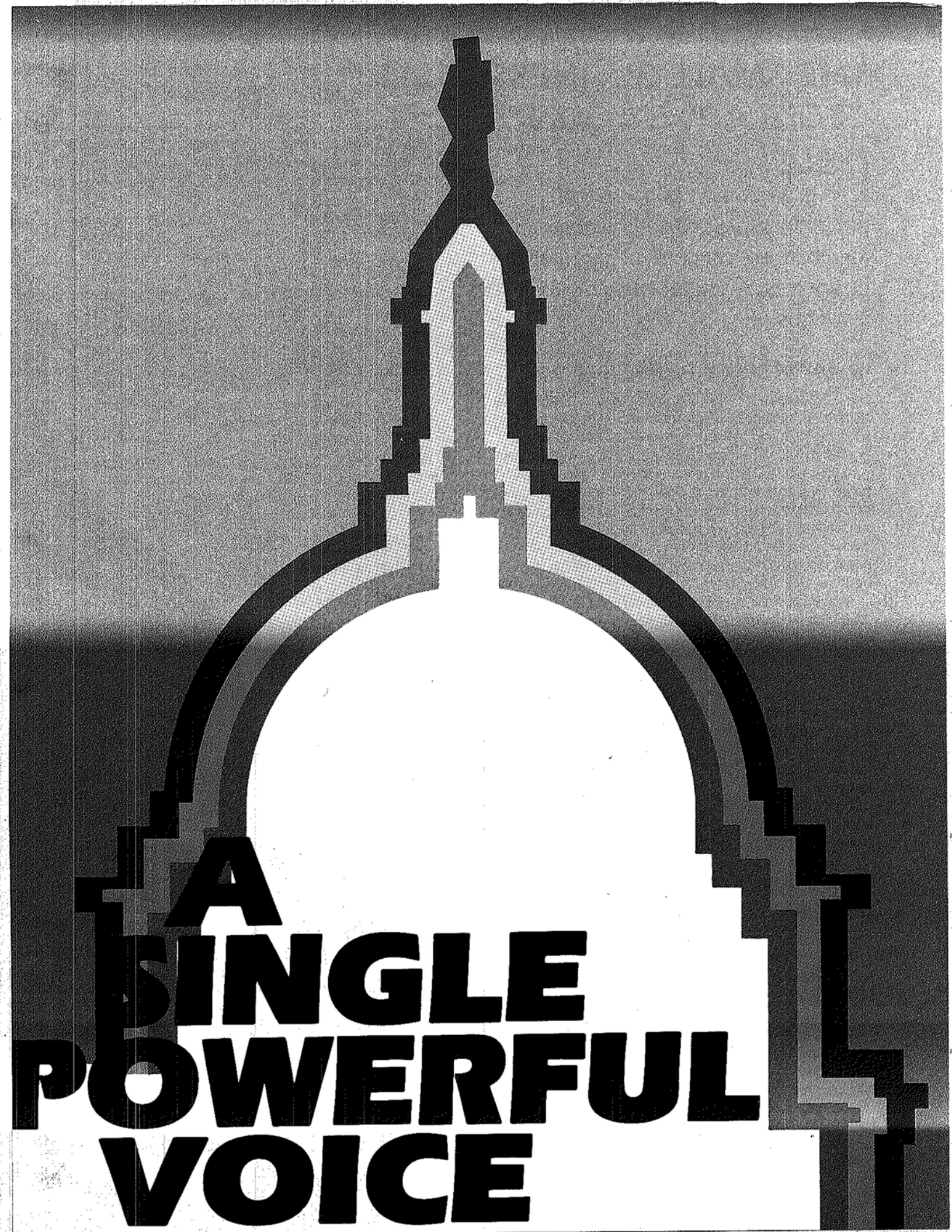

A
SINGLE
POWERFUL
VOICE

THE SMALL BUSINESS LEGISLATIVE COUNCIL (SBLC)...

is an organization of trade and professional associations whose members are predominantly smaller businesses. A single powerful voice for small business.

WHAT IS SBLC's PURPOSE?

The basic purpose of SBLC is to maximize the influence and strength of small business on issues of importance to the entire small business community... issues or areas in which the Council member associations are in substantial agreement.

In the past, the small business community has too often been fragmented and defensive in posture. In contrast to organized labor, which is largely unified, most trade and professional associations with an interest in small business issues have worked separately and without coordination. This has caused duplication of efforts and weakening of the overall small business message.

As a result, small business has been out-played in Washington for the last 30 years by big business, big government, big labor and more recently by so-called spokesmen for the consumer and a variety of related groups.

SBLC turns this around. It brings the many voices of small business together on the issues that affect the whole spectrum of industries and professions. SBLC is a unified force that is respected throughout the government. Its views are sought by government. In numbers there is strength. SBLC has numbers, but more importantly SBLC also has the right image for effective lobbying.

Teamwork and cooperation increases the effectiveness of all efforts (individual or group) on any issue. SBLC coordinates the power of its members both in Washington and in the grassroots.

WHAT ADVANTAGES DOES SBLC OFFER?

The strength of SBLC lies in its guiding principles of teamwork and cooperation, and in its strict respect for the autonomy of each member association. The members of SBLC are its policy-makers.

SBLC positions are adopted only when 60% of the Council members agree on the position to be taken. Each member association always has the option of supporting that position by participating in or allowing its name to be used in connection with statements, presentations, discussions, or public releases. But no Council member is "locked into" any position taken by the SBLC as a whole. Where SBLC takes a position which for some reason is in conflict with a member association's policies, that association will not be listed in support of the SBLC position and, of course, is free to oppose the SBLC position. Thus the independence and autonomy of each member is fully respected.

In addition to the added "clout" that numbers bring to any effort, the SBLC practice of teamwork and cooperation permits the Council to share expertise, insight, and judgment. And SBLC uses respected experts on specific topics, where individual association budgets might not permit it.

SBLC encourages all member associations to reap for themselves full or shared credit for the successes achieved by SBLC as each member association sees fit. Each SBLC member can capitalize on any position paper, issue, or "victory," using SBLC materials or efforts with or without attribution to SBLC.

In addition to all the benefits derived directly from SBLC, there is a benefit to the member associations in being able to focus their resources on the specific issues uniquely affecting their industry, knowing that leadership on many general issues affecting the whole small business community is being provided by the SBLC. Since SBLC focuses on issues of common concern to the small business community, SBLC quite properly leaves to the individual Council member the handling of its own particular problems in Washington.

WHAT HAS SBLC DONE FOR MY ASSOCIATION LATELY?

Plenty!!

The SBLC was formed during the fight to save the Senate Small Business Committee from a proposed merger into the Agriculture Committee or

THE SMALL BUSINE LEGISLA COUNC

other committees. SBLC rallied more than 250 associations to this cause. Senators were hit with tons of mail from small businesses asking that the Small Business Committee be saved. Professional staffs of the SBLC member associations added their personal efforts in Washington, talking to Senators and staffers, and compiling convincing materials in support of the continued independent existence of the Small Business Committee. The Senate vote in favor of the SBLC position was 89-1.

SBLC moved from victory to victory. In its first year, the Council participated in the defeat of Common Situs picketing in the House, and it was the SLBC, using its established small business organizations, that marshalled the forces necessary to prevent passage of the Labor Law "Reform" bill on the floor of the Senate, despite the support of the Administration, the Senate Majority Leader and the full clout of organized labor.

The Council, though, is essentially a positive association, and its most significant accomplishments have been in areas where it has gone on the offensive. In its first year, the SBLC succeeded in establishing an employment tax credit as a part of the Tax Code, and more recently, the SBLC won a major struggle to include the concept of a graduated corporate income tax in the Revenue Act of 1978.

As SBLC grows, so does its ability to win the big ones!

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WHAT KINDS OF ISSUES DOES SBLC TAKE POSITIONS ON?

Because SBLC is concerned with the small business community as a whole, the issues on which SBLC has taken positions are those which affect all small businesses.

Issues like minimum wage... labor relations... government reorganization... government procurement... Small Business Administration programs and policies... Social Security... sunset laws... establishment of a small business "voice" within the White House.

The list is potentially endless. And it is being expanded constantly, as SBLC members discover that many of the problems of their members are shared in common by smaller businesses in other industries. Any issue which is important to small business in general is important to SBLC.

And while there are issues upon which SBLC must take a defensive position, SBLC is largely positive in operation, going on the offensive to create an economic climate in which small business can grow and prosper. Creating this climate requires fundamental changes in government attitudes towards small business. Unlike the coalitions hastily thrown together to fight "brushfire" battles as they occur, SBLC devotes considerable resources to pushing for these fundamental changes in favor of small business, rather than merely fighting proposals that would harm small business.

As a permanent, on-going coalition with broad-based interests, SBLC can do the patient groundwork required to make affirmative small business proposals reality... things like a graduated business tax system... a two-tier regulatory policy... catch-up growth for small business... two-tier antitrust regulation.

HOW IS SBLC OPERATED?

While administrative, housekeeping and service facilities for SBLC are provided free or at cost by the National Small Business Association, SBLC makes its own rules and it is autonomous in choosing the subjects it will concentrate on. Every member has the right to propose that the SBLC take a position on a particular issue. Before any position is adopted, 60% of the Executive Committee and 60% of the Council members must approve the SBLC policy position.

The SBLC elects its own Chairman, other officers, and the Executive Committee.

Between meetings of the Members (approximately quarterly), the Executive Committee makes recommendations and utilizes mail votes of Council members to determine the SBLC position on issues that may have arisen since the latest meeting of the members.

Leadership on SBLC issues is alternated among Council members according to their own determination. Members provide the bulk of spokesmanship on SBLC issues. This allows each member to do a better job, both by covering a wider range of issues than it might be able to do alone, and by providing vigorous leadership in areas of high priority to the member associations.

A concise newsletter is circulated to SBLC members, keeping them informed of recent developments in areas of SBLC interest.

The policy and organizational integrity of each member association is scrupulously respected. Membership lists of individual asssociations are never requested by SBLC. Distribution by Council members of material prepared by SBLC for grassroots "clout" is voluntary, and rests with individual associations.

WHO IS ELIGIBLE FOR SBLC MEMBERSHIP?

NATIONAL MEMBERSHIP — Open to national associations whose members are predominantly small businesses or independent professionals, providing that at least 70% of the association's dues income is derived from small businesses (or professionals) which are independently operated and not dominant in their field.

ASSOCIATE MEMBERSHIP — Open to regional and state associations which are multi-industry and are not affiliated with a national association that belongs to SBLC, provided the Associate member meets the same criteria imposed upon national members.

The Executive Committee reviews all applications for membership, and reserves the right to grant an exemption from the standard criteria in special cases. The Executive Committee may use the size standards of the Small Business Administration as a basis for determining eligibility.

HOW MUCH WILL DUES COST ME?

SBLC dues for national, regional and state associations are one-half of one percent (½ of 1%) of the association's dues income during the past fiscal year of the association. Maximum dues are $1,000.

HOW WILL THE MONEY BE SPENT?

As a broad guideline, SBLC funds are allocated as follows:

—75% for professional help (including retention of experts to prepare and present testimony and statements on behalf of SBLC).

—25% for administrative costs (including paper, printing, stamps, etc.).

Because SBLC is based on teamwork and cooperation, there is reliance on volunteer efforts of the member associations. SBLC takes advantage of the combined wisdom and expertise of its members.

National Small Business Association neither assumes nor intends that its positions on all issues will become those of the SBLC. What NSB hopes to create through the SBLC (in which it functions like any other member) is a stronger, more effective voice to speak on behalf of small business. NSB has no desire either to dominate the SBLC or to pre-empt the leadership role of any other member association.

Small Business Legislative Council

The National Small Business Association Building
1604 K Street, N.W.
Washington, D.C. 20006

ENDORSEMENTS



"In my career as an association executive, I have worked with many different inter-industry groups or task forces. But SBLC has accomplished more in its first few months of existence than many of these groups have achieved in many years. I think the formation of SBLC is the most significant thing that has happened in the small business community in years."

Don J. DeBolt
Executive Director
MENSWEAR RETAILERS OF AMERICA
Washington, D.C.



"The SBLC concept is definitely the wave of the future. I have no doubt that this group will be the most important spokesman for small business in years to come."

Harold M. Gram
Executive Secretary
INDEPENDENT SEWING MACHINE DEALERS OF AMERICA, INC.
Hilliard, Ohio



"There are times when an issue of legislative importance to the NCWA comes up, and I don't have the time to study every aspect of that problem. The SBLC utilizes the expertise of others, and often speaks for the NCWA on such issues. This saves me time and insures that the views of my association's members have been presented by someone thoroughly familiar with the problem."

Russ Shipley
Executive Secretary
NATIONAL CANDY WHOLESALERS ASSOCIATION, INC.
Washington, D.C.



"SBLC can go to the Hill with a list of 200 associations supporting its position. SBLC can retain a top person in the field to prepare and present testimony on behalf of its members. This allows our own association's limited budget to be devoted to specific industry issues."

Joseph L. Koach, CAE
Executive Vice President
INTERNATIONAL FRANCHISE ASSOCIATION
Washington, D.C.



"Although I don't always agree with every position taken by the SBLC, I know that each Council member has the freedom of decision and the right to take an individual or opposing stand. It's the American way and that is what makes the SBLC a strong force in Washington."

John G. Mohay
Executive Vice President
NATIONAL INDEPENDENT MEAT PACKERS ASSOCIATION
Washington, D.C.



"When our association here in New York can claim credit for a victory that SBLC work in Washington made possible, our SBLC dues must be just about the best bargain around!"

Randolph J. Seifert
Vice President and General Counsel
NATIONAL HOME IMPROVEMENT COUNCIL
New York, New York



"SBLC has built the first united front for small business. In addition, SBLC keeps me informed of developments in Washington affecting small business, which is valuable to me since our association is headquartered in California."

James J. Gibbons
President
MANUFACTURERS AGENTS NATIONAL ASSOCIATION
Irvine, California



"SBLC is an organization for such times as these. It is fulfilling a vital role of giving me the benefit of others' thinking, and giving me an opportunity to make proposals that I feel will be of benefit to my members. Few organizations or coalitions are as open to suggestions from its participants."

John T. Bass
Executive Vice President
CHRISTIAN BOOKSELLERS ASSOCIATION
Colorado Springs, Colorado

AWAinformation
A Swedish View On Intellectual Property
No 4 1999

Patent litigation - a jungle of different national laws

BY MARIA FRÖDIN
AND LARS PETTERSSON, AWAPATENT

Getting a patent takes time and money. As the patent holder, you want to see returns on your investments. That is why it is in your interest to actively guard your sole rights and allow others to use them only with your permission. In case of infringement, you should warn the infringer. If you cannot reach an agreement, the next step is usually to take the dispute to court. But what happens then? And in which country should you begin proceedings?

If you discover that your patent is being infringed, the first thing you should do is to find out who is committing the offence and where. Infringement can, of course, be committed in a number of countries. You then need to check the status of your patents in these countries. How is the final patent worded in each country? What scope of protection does it offer? And has it been properly maintained – in other words, have you been paying the annual fees regularly?

➪

The prospect of a patent dispute is a nightmare for many companies, no matter whether they are the plaintiff or seeking to defend the action. Time-consuming, costly and complicated are words that readily spring to mind for those who have already been through this laborious process. And yet, more often than not, what is at stake here is nothing less than the right to use or monopolise a technical solution which is absolutely crucial for a company's development and competitiveness. No wonder this is a subject that makes people sit up and take notice...





THERE ARE IMPORTANT DIFFERENCES IN THE WAY DIFFERENT COUNTRIES HANDLE PATENT LITIGATIONS. YOU HAVE TO MAKE THE RIGHT DECISION FROM THE START.

PHOTO JEFFERY RICHT

Important differences between countries

If the infringement is taking place in more than one country, the question then arises of where to initiate the prosecution. Is it best to bring all the prosecutions simultaneously, or is it advisable to begin in one particular country?

In order to be able to decide where to initiate an action you need to take into account not only the esteem in which the activities of the infringer are held in the relevant countries, but also how the courts in these countries tend to view cases of alleged infringement. In some countries the courts are more sympathetic towards the patent holder, whilst in others they are more restrictive in their assessment of the protection afforded by a patent. Even within one and the same country, different courts can adopt very different stances on this issue.

Another factor to consider is the time aspect. The time taken to process an infringement case can vary considerably from country to country. Make sure you have at least a rough idea of how long it will take before you can expect a verdict.

Starting in the 'right' country

Even though a verdict in one country does not normally carry any legal consequences in another, it is always an advantage to be able to point out that a court elsewhere has already ruled that infringement has taken place. A verdict like this can be a useful weapon in the legal proceedings in a new country. That is why it is essential to initiate the prosecution activities in the 'right' country.

The matter of legal costs and the sums awarded in compensation can, of course, also play their part when deciding whether or not to go to court in a particular country. To process a case regarding patent infringement in the USA is, for example, an extremely expensive business. The opportunities for securing evidence of infringement vary from country to country. For example, since the beginning of 1999, it has been possible in Sweden to request an "infringement investigation" to secure evidence of infringement (see Awainformation No. 3/99).

However, do not underestimate the importance of making an example of someone suspected of infringement. That way, you send clear signals to other companies that you mean business and are prepared to defend your patent, even if it means going to court.

As is evident from the information above, it is not possible to lay down any hard and fast rules about where you should initiate a legal action in all details of the different stages of each individual case. Work is now taking place on harmonising the various proceedings in the EPC patent legislation, following in the footsteps of the European trademark system and Swedish court practice.

Patent litigation in Sweden

In Sweden patent cases are heard at the first instance exclusively by the District Court of Stockholm, Division 7.

A legal action is initiated when the plaintiff files a writ of summons at the court. The writ, among other things, states a claim against the defendant. It may be a request to the court to declare that the opposing party's claim of infringement is not justified. Depending on the opposing party's claim, a request for a ban or damages may be made. It is also possible to ask the court to issue an injunction against the opposing party, which means a ban from further infringement pending a final ruling in the case.

When the summons application has been examined by the court it is sent to the opposing party, who is ordered to submit a defence, in other words to put their side of the case. Where infringement is concerned, it is by no means uncommon for the opposing party to make a counterclaim against the patent holder, in other words a request that the court should declare the patent invalid. If so, this is heard in conjunction with the main action, explains Rolf Nöteberg, Senior Judge of Division 7 of the District Court of Stockholm.

After further exchanges of documents, it is time for the preliminary hearing. By then, six to twelve months have usually passed since the writ of summons was submitted. The parties and/or their attorneys must be present at the preliminary hearing, but witnesses and experts are not present until the main hearing. Once the preliminary hearing is over, the parties are given a final opportunity to add any further evidence to back up their claim.

Thereafter the case is ready for the main hearing, which usually takes place around two years after initiation of the legal action. Once the main hearing has ended, the court holds its deliberations to arrive at a ruling, which is generally announced a few weeks later.

An appeal against the ruling can be lodged with the Court of Appeal (Svea hovrätt in Stockholm), which will re-examine the case. At this point the parties cannot, in principle, plead new circumstances or produce any new evidence in support of their case. It is therefore imperative to devote due and careful deliberation to the way in which the case is to be conducted at the District Court, i.e. the first instance. A final ruling from the Court of Appeal can take up to three years from the date of the appeal.

It is also possible to appeal against a ruling by the Court of Appeal. This is done at the Supreme Court. "Before the Supreme Court reviews a case, a review permit must be granted and this happens very rarely. Therefore, the parties cannot usually expect to plead their case in more than two instances," Rolf Nöteberg concludes.

The fact is that, when the Swedish Supreme Court at the beginning of next year hears a case between Comviq and Europolitan involving the alleged infringement of a patent concerning mobile telephony, it will be the first patent case the Supreme Court has considered in more than 20 years.

Judges not specially trained

Although intellectual property law differs from general jurisprudence such as purchase law, family law and criminal actions, the judges who try patent cases have no special training. In practice this does not pose a problem as all patent cases in Sweden are heard by the same district court and the same court of appeal. As a result of this the judges become highly skilled in these mat-

ters. Moreover, the opposing parties are usually represented by attorneys who specialise in patent law. Thereto, patent cases are normally heard by two legal judges and two technical judges. The technical judges are either judges from the Court of Patent Appeals (i.e. the administrative court which re-examines decisions made by the Swedish Patent Office on patent applications) or scientists.

"Because the remuneration for the technical judges in patent cases is very low, it is difficult to attract specialists from industry to act in this capacity, which would otherwise be both feasible and desirable," explains Rolf Nöteberg. "Another matter to consider when appointing technical judges is the question of disqualification. All those involved in judging a case must, of course, be impartial. For example, the judge from the Court of Patent Appeals must not have been involved in the granting of the patent in question."

Constantly rising costs

In Sweden the party who loses the case usually has to compensate the opposing party for their legal costs and of course also pay its own costs. Legal costs in this sense mean a party's own expenses as well as those for attorneys, expert reports and evidence, for example, compensation to witnesses. Each party can expect to pay a minimum of between SEK 200 000 and SEK 300 000 in legal costs for patent cases, and costs of a considerably higher order are by no means uncommon. In the 1990s patent cases have become far more complex in nature and the cost of litigation has increased. For example, in a patent case heard by the District Court of Stockholm, legal compensation of SEK 9 400 000 was awarded to the winning party as remuneration for its costs in the first instance!

NEWS ITEMS

Prosecution blunder leads to not-guilty verdict in Internet case

A teenager who added links to music in MP3 format on his home page and refused to close them down was freed recently by the Skövde District Court in Sweden. Because the teenager did not actively distribute the music, but merely created links to existing sites, the District Court ruled that this did not constitute distributing sound files in the copyright sense. The teenager probably owes this lucky escape to the fact that the prosecutor failed to call for assistance from copyright infringement experts. The prosecution's only hope now rests with the Court of Appeal examining the case under a new petition for complicity in offences against the Copyright Act.

Patents for computer programs

Two recent decisions by the European Patent Office (EPO) pave the way for a favourable, new approach to the problem of protecting computer programs with patents. Until now computer programs have been patented as processes or methods. This has meant that no patent infringement occurs until the consumer unlawfully uses the computer program. Now, however, computer programs are defined in a way which means that the actual CD or diskette containing the software can be protected by patent. Anyone who unlawfully distributes the program will be guilty of infringing the patent.

For further information, please contact steve.athle@awapatent.com

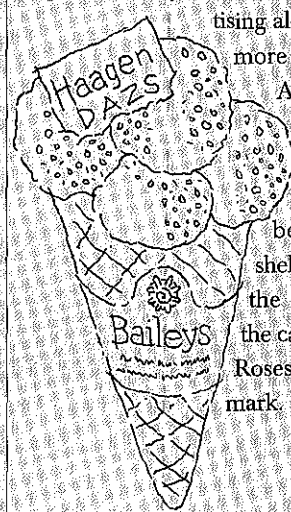
Amazon.com sues Barnesand-noble.com

Amazon.com, the Internet's leading e-commerce store, is suing Barnesand-noble.com, one of their competitors. Since September 1997 Amazon has offered an Internet service called "One-click shopping". When customers register their first purchase with the store, a small file, known as a "cookie", is stored in their computer. Customers returning to the web store are identified by their cookie, and thus avoid having to enter the same information for each new purchase.

In September 1999 Amazon was granted a patent for its invention and the company is now claiming that their competitor, Barnesand-noble, who operates a similar service, has copied the idea. While critics maintain that the idea is so obvious and straightforward that it does not qualify for patent protection, Amazon argues that the thousands of hours invested on product development should give the company the exclusive right to reap the fruits of its labours.

Häagen-Dazs and Baileys

Häagen-Dazs tasty ice-cream is on sale again in Swedish stores, this time in a Baileys whiskey liqueur flavour. However, it remains to be seen whether the packaging, emblazoned with the Baileys logotype, will be allowed to remain as it is. Sweden operates a very restrictive policy for advertising alcohol and, even more so, for tobacco.



A few years ago, a new cola drink with a dash of whiskey had to be taken off the shelves shortly after the launch because the can bore the Four Roses whiskey trademark.

Rewards for tip-offs on pirates

As the Internet increases in popularity, the piracy of programs and games is gaining momentum. Fortunately, growing awareness of the piracy problem is leading to an increase in the number of raids and the Business Software Alliance, (BSA) is now going one step further by trying to enlist informers through advertising campaigns and rewards of up to SEK 250 000. One recent tip-off enabled the BSA to crack down on the largest piracy ring so far encountered in Europe - a Danish company which had produced around 125 000 CDs with a street-value of SEK 2 billion.



Harmonising EPC patent litigation

BY JAN KÄLLMAN, COMVISION

The procedural regulations regarding, for example, patent infringements vary considerably from country to country. This means that the same conduct can be ruled as infringement in certain countries but not in others.

This makes predicting the outcome of infringement situations a very tricky business. It is also very expensive to have to initiate proceedings in each of the various countries where infringement is taking place. In order to get to grips with these problems, the member states of the European Patent Convention (EPC) have embarked on an ambitious project to devise a new, common model for settling EPC patent disputes.

One suggestion being investigated is the creation of a "common entity", an equivalent to the European Court of Justice, i.e. a court which can advise national courts how to view a variety of issues concerning EPC patent disputes. Thereafter the national courts rule on the disputes. Another suggestion is the creation of a common court system for EPC patent disputes, where just one single court in Europe would be entitled to handle all the EPC patent cases. In this scenario the dispute would be heard from start to finish in the special EPC patent court.

"The process to harmonise litigation in patent issues now set in motion by the EPC member states is a long, drawn-out one," says Malin Bonthron, a legal expert at the Swedish Ministry of Justice. "There are a number of avenues to explore, and, in view of the great number of issues to consider, the official Swedish standpoint has not yet been decided. All I am able to say is that the working party's report has to be ready by 1 July 2000 - but, on this basis alone, it's impossible for me to predict when any changes in the law might be introduced," she adds.

Collective approach required

At a conference of government ministers from the EPC member states during the summer of 1999 two working parties were set up to look at patent issues. One has been asked to put forward proposals for reducing the costs for EPC patents (primarily with regard to translation costs). The task of the other party is to investigate the effectiveness of the EPC patent and the legal security it offers. This brief includes looking at the possibility of harmonising laws and regulations in Europe.

In the mandate to the working parties the need to create a new system with a common interpretation of EPC patent issues is clearly stated, as is the fact that "companies and inventors in Europe expect a judicial system that provides a rapid and reliable decision in the court of first instance in each member state".

"We are looking at these questions," says Malin Bonthron. "At present the working parties are carrying out a number of preliminary investigations to give them an all-round view of the issues at stake. Here in Sweden it is actually the Ministry of Industry and Trade that is responsible for most of the work, while my job is to safeguard the interests of the Ministry of Justice. To help us in our work, we have a consultative panel with representatives from the concerned parties and we will also be submitting frequent reports to the Swedish government."

Three suggestions towards harmonisation

At present there are three especially interesting proposals for a future model for handling EPC patent disputes:

• A thorough review of the current principles for arbitration, in other words, the regulations that apply when parties appoint their own arbitrators to solve disputes. Special attention will be devoted to looking at how this procedure relates to the validity and infringement issues in the individual EPC member states.

• A "common entity", which, in this instance, means an advisory court for patent disputes. The working party will define how such a court might be set up and financed. The idea is that this court would work in the same way as the European Court of Justice, which is able to advise how different issues in a dispute should be interpreted.

• A uniform, integrated legal system. This proposal will be the subject of further consideration by the working party as it requires the various individual countries to agree on common regulations for legal proceedings and appeals.

"All of this work is still very much in its infancy," says Malin Bonthron, "so it's impossible for me to predict which of the proposals will finally be accepted."

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