Anti Suit Injunctions and Foreign IP claims: Topalsson judgment

On 17 August 2023, Waksman J handed down judgment in *Topalsson v Rolls-Royce* [2023] EWHC 2092 (TCC). Matthew Lavy KC and Gideon Shirazi acted for Topalsson; Alex Charlton KC and Iain Munro acted for Rolls-Royce.

Topalsson is a German company which had developed cutting-edge automotive software. It had agreed to a project to implement and licence software to Rolls-Royce to be used worldwide. That project was ultimately unsuccessful. Topalsson sued Rolls-Royce US, BMW and various Rolls-Royce dealers in a US district court in California for US copyright infringement, claiming that those companies had and were copying its core software. Rolls-Royce sought an anti-suit injunction in England to prevent the US copyright from proceeding in the United States on the basis of an exclusive jurisdiction clause in the project contract.

Waksman J dismissed the claim, refusing to grant an anti-suit injunction.

Waksman J broke his analysis down into three parts. First, he considered whether the foreign IP dispute could fall within the project contract exclusive jurisdiction clause if the claim were brought against the contracting party Rolls-Royce. He concluded that foreign IP claims could in principle fall within an exclusive jurisdiction clause, and that the present claim would have fallen within the clause if advanced against Rolls-Royce. This is a significant clarification of the law because of the broader debate about when IP claims fall outside the scope of jurisdiction clauses in general.

Second, he considered whether the clause covered non parties. He identified that the starting point in most cases is that a jurisdiction clause covers only parties and not non-parties. There was no basis for departing from that starting point, and the contract in this case supported that analysis. The judge went on to consider the controversial *obiter* statements of Lord Scott about the availability of anti-suit relief against non-parties where there is a joint tort, and the associated discussion in *Clearlake* and concluded that this was not a situation where that analysis could apply. The judge's analysis is a helpful advance in the case law about the scope of this possible exception.

Third, the judge rejected the claim for an anti-suit injunction on the non-contractual basis. He concluded that there was no basis for the English court to restrain claims for foreign IP infringement in the relevant foreign jurisdiction.

This is the second recent judgment about the availability of anti-suit injunctions to restrain foreign intellectual property claims. Around one year ago, in *IBM v LzLabs* [2022] EWHC 2094 (TCC), another case involving several of the same members of 4 Pump Court, Waksman J dismissed a claim for an anti-suit injunction associated with US trade secrets and patent claims.

Members of 4 Pump Court regularly act on anti-suit injunctions (in a wide variety of contexts) and intellectual property claims.

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