EXHIBIT 2.W

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Sources and quotes

S.I. Kantas, up to date through February 15, 2011

Up to date through
February 15, 2011
Time period
October 10, 2010 through: -
Author
S.I. Kantas
Source
Lexplicatie, commentary on Section 23b of the Dutch Patents Act 1995
JCDI
JCDI:ADS173475:2
Field(s)
Intellectual Property / Patent Law
Legislation considered
Patents Act 1995, article 23b

Parliamentary proceedings

The Explanatory Memorandum to the Kingdom Act of 13 June 2002, *Bulletin of Acts and Decrees* 2003, 366, states, *inter alia*:

'Patent applicants may submit their application to the Office without engaging an authorized representative. Nevertheless, because the patent procedure is complicated and experience in dealing with patent applications is essential for that procedure to succeed, specialists, namely patent attorneys and attorneys specialized in patent law, are called in to assist in many cases. The register of patent attorneys can be consulted to find patent attorneys. (...) Lawyers who are not listed in the register of patent attorneys can be asked to demonstrate that they are registered as attorneys with a court in the Netherlands. (...) The third paragraph mentions an exception to the rule that only patent attorneys and attorneys may act as an authorized representative of an applicant before the Office. (...) This is very seldom used in practice. Under the current provisions of the Dutch Patents Act (*Rijksoctrooiwet*), Dutch Patents Act 1995 and the Rules on Patent Attorneys (*Octrooigemachtigde-reglement*), there was some uncertainty about the meaning of the distinction between an authorized representative and a patent attorney. On March 6, 1997, The Hague Court of Appeal gave an answer to this in a decision (docket number 95/0696) in the case of the Netherlands Institute of Patent Attorneys et al. versus the Netherlands Industrial Property Office (State of the Netherlands) et al. involving a dispute about the interpretation of Section 29P of the Dutch Patents Act and Section 52 of the Dutch Patents Act 1995. To avoid interpretation problems in the future, the expression 'authorized representative of an applicant before the Office' is now consistently used as a general term, meaning a patent attorney or an attorney who may act before the Office in accordance with Section 23b. The term 'patent attorney' is only used for persons listed in the register of patent attorneys, as referred to in Section 23a.'

Parliamentary papers II 1999/2000, 27 193 (R 1658). no. 3, p. 13 (Explanatory Memorandum)

In the section that was originally proposed, acting as an authorized representative was limited to representing the applicant. What that boiled down to was that persons other than the applicant could be represented by anyone and everyone. That situation has been corrected as a result of an Amendment proposed by Member Hindriks. The explanatory memorandum to the amendment read as follows:

'The purpose of this amendment under which anyone who wishes to be represented before the Office and before the Patent Office (*Octrooiraad*) and not just the applicant, is to provide protection in all

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situations by allowing any expert representatives referred to in the Act to represent them and not just patent attorneys. The complexity of the subject matter, the procedure to be followed and the substantial financial interests involved in patent procedures make it necessary to provide expert guidance to users, applicants for patents and persons entitled to them. There is every reason to ensure that expert guidance is provided for those having to deal with complicated subject matter, patent procedures and substantial financial interests before the Office. There is no justification for an arrangement in which an applicant is only allowed to engage an officially authorized representative while a patentee may be represented by anyone, even though the procedures involved are in fact the same and the interests are even greater. The list of persons other than patent applicants who may apply to the Office and who may engage an authorized representative to do so is headed by a patentee, e.g. in a request for the restoration of rights (Section 23 of the Dutch Patents Act 1995) or in a response to a request for advice as to the validity of his patent (Section 85 of the Dutch Patents Act 1995), and an applicant in a request for protection of a topography of a semiconductor. The same applies to applications to the Patent Office (*Octrooiraad*) (Section 18A of the Dutch Patents Act). In opposition proceedings, according to the proposed amendment, an applicant may only engage an officially authorized representative, whereas the opposing party may engage anyone to represent him. There is no rationale for this discrepancy. Expertise and accountability of the representation of both parties is of absolute importance.'

Parliamentary papers II 1999/2000, 27 193 (R 1658), no. 7 (Explanatory memorandum)
It may be inferred from this that tasks of the patent attorney are regarded as being broader than simply providing assistance in drawing up and submitting a patent application.

Case law

'Summary:

1. Article 59 of the EEC Treaty requires not only the elimination of all discrimination against a person providing services on the grounds of his nationality, but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, when it is liable to prohibit or otherwise impede the activities of a provider of services established in another Member State where he lawfully provides similar services. In particular, a Member State may not make the provision of services in its territory subject to compliance with all the conditions required for establishment and thereby deprive of all practical effectiveness the provisions of the Treaty whose object is, precisely, to guarantee the freedom to provide services. Such a restriction is all the less permissible where, unlike the situation governed by the third paragraph of Article 60 of the EEC Treaty, the service is supplied without its being necessary for the person providing it to visit the territory of the Member State where it is provided.

2. Having regard to the particular characteristics of the provisions of services in certain sectors of activity, specific requirements imposed on the provider, which result from the application of rules governing those types of activities, cannot be regarded as incompatible with the Treaty. However, as a fundamental principle of the Treaty, the freedom to provide services may be limited only by provisions which are justified by imperative reasons relating to the public interest and which apply to all persons or undertakings pursuing an activity in the State of destination, in so far as that interest is not protected by the rules to which the person providing the services is subject in the Member State in which he is established. In particular, those requirements must be objectively necessary in order to ensure compliance with professional rules and to guarantee the protection of the recipient of services and they must not exceed what is necessary to attain those objectives.

3. Article 59 of the EEC Treaty precludes provisions of a Member State which prohibit a company established in another Member State from providing patent-owners in the territory of the first State with a service for monitoring those patents and renewing them by payment of the requisite fees, on the ground that, by virtue of those provisions, such

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activities are reserved to persons holding a special professional qualification, such as a qualification as patent attorney.

Court of Justice of the European Community ((Sixth Chamber), July 25 1991, Manfred Saeger versus Dennemeyer, case C-76/90

Literature

For a comprehensive discussion on professional confidentiality and right of non-disclosure, see Prof. J.B.M. Vranken: *De hernieuwde omlijning van het professionele verschoningsrecht in the rechtspraak van de Hoge Raad sedert 1983 ('The updated rules on professional legal privilege in the case law of the Dutch Supreme Court since 1983') TVVS* 1987 no. 87/8. as well as F.J. Fernhout: *Het verschoningsrecht van getuigen in civiel zaken ('The right of witnesses to refuse to give evidence in civil cases'),* Kluwer recht en praktijk no. 131.

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I, Dorine Mathilde Antonie Stevens, residing in Utrecht, duly sworn as a translator for the English language by the District Court of Midden-Nederland, Utrecht location, and listed under number 11745 in the Dutch Register of Sworn Interpreters and translators (*Register beëdigde tolken en vertalers*) of the Dutch Legal Aid Board (*Raad voor Rechtsbijstand*), the official register of sworn translators and interpreters recognised and approved by the Dutch Ministry of Justice, certify that the foregoing document is a true and faithful translation of the Dutch source text, a copy of which is hereby attached.

Amsterdam, 15 July 2021

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