

Annex 1

Questions to be answered orally pursuant to Article 61(1) of the Rules of Procedure of the Court

The parties to the proceedings are invited to answer the following questions at this stage:

- 1) Having regard to paragraphs 30 and 31 of the judgment of 1 March 2005, *Owusu* (C-281/02, EU:C:2005:120), and in particular the principle that treaties are binding only on the parties, it is appropriate to distinguish the situation in which a court of a Member State, having jurisdiction under Article 4(1) of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,¹ is required to assess a series of facts situated or having occurred in a third country [such as an accident for the purposes of establishing (non-)contractual liability] from the situation in which that court must assess the validity of an act issued by a public (administrative) authority in a third country, such as the validity of a patent granted by a third country?
- 2) Assuming that Article 24(4) of the Brussels I Regulation has no bearing on the jurisdiction of the courts of the Member States to examine the validity of a patent granted by a third country in proceedings concerning the infringement of that patent, is it then relevant to the application of Article 4(1) of that Regulation that
 - that patent has been granted by a body within an international organisation, such as the European Patent Office, under a mechanism based on a common procedure for granting patents established by an international convention, such as the Munich Convention?²
 - the judgment of the court of that Member State would have effect only *inter partes*?
 - the national law of the third country concerned provides for exclusive (absolute) jurisdiction to hear disputes concerning the validity of a patent, and that the courts of that third country would therefore not only be ‘appropriate’ for the determination of the issue of a patent’s validity, but would also have exclusive jurisdiction under the applicable national law?
- 3) If the Brussels Ia Regulation is to be interpreted as meaning that, in a situation such as that in the main proceedings, a court of a Member State has jurisdiction to hear an action for infringement of a patent granted in a third country, pursuant to Article 4(1) of the Brussels Ia Regulation, can

¹ Regulation of the European Parliament and of the Council of 12 December 2012 (OJ L 351, 2012, p. 1) (the Brussels Ia Regulation).

² The Convention on the Grant of European Patents, signed in Munich on 5 October 1973, as last revised by the Act of Revision of 29 November 2000, adopted by the Administrative Council of the European Patent Organisation on 28 June 2001 (Official Journal of the EPO 2001, Special Edition No 4, p. 55).

that provision, in particular in the light of recital 15 of the Regulation and paragraphs 47 to 52 of the judgment of 1 March 2005, *Owusu* (C-281/02, EU:C:2005:120), permit an interpretation according to which that court, before which the issue of the validity of the patent has been raised, could declare itself incompetent to rule on that issue, on the basis of its national law, in favour of a court in a third country, in cases other than those specified in that Regulation?

- 4) If a court of a Member State, before which a question concerning the invalidity of a patent validated in a third country has been raised in proceedings for infringement of that patent, were to declare itself competent to rule on that question, for example on the basis of Article 4(1) of that Regulation, would the fact that the patent proprietor, who is established in the Union, can no longer enjoy the rights attached to the patent in the event that the patent is declared invalid in the context of those proceedings, be compatible with respect for intellectual property rights, as protected by Article 17(2) of the Charter?
- 5) What lessons can be drawn from the judgment of 9 November 2000, *Coreck* (C-387/98, EU:C:2000:606) and the judgment of 19 July 2012, *Mahamdia* (C-154/11, EU:C:2012:491) regarding the jurisdiction of a court of a Member State to hear disputes with a close connection to a third country?
- 6) Does international law, including customary international law, preclude the courts of one State from ruling on the validity of a right granted by a public authority in another State, in particular the validity of a patent granted by an authority in another State?
- 7) Did the EU legislature, when adopting the Brussels I Regulation, intend to regulate exhaustively conflicts of jurisdiction between courts in Member States and courts in third countries where the defendant is domiciled in the Union? In particular, did the legislator intend, by means of Articles 33 and 34 of that Regulation, to exhaustively regulate the possibility for a court of a Member State, which has jurisdiction under Article 4(1) of that Regulation, to decline jurisdiction in favour of a court of a non-member country, irrespective of the circumstances? If so, did the EU legislator intend to prohibit a court of a Member State, before which a dispute concerning the validity of a patent granted by a third country has been brought, from declining jurisdiction in favour of the courts of the third country which granted the patent, in situations other than the specific situations referred to in Articles 33 and 34? Participants in the hearing are invited to refer to the relevant preparatory works.