

## **Fordham IP Conference – Cambridge 2009**

### Cross Border Patent Infringement – a Comparative Analysis – The UK Perspective

#### **Overview of Brian Cordery's presentation**

Patent laws around the world were developed long before the globalisation of the world economy and, inevitably, the legislators and the Courts struggle to keep up with modern advances such as on-line sales platforms and auction sites. As patents continue to be granted and administered on a national basis, so too, infringement is essentially assessed on a national basis. Attempts to enforce European Patents on a pan-European basis have largely fallen away.

However, in the UK it is not always safe for an infringer to assume that if the relevant acts it undertakes are outside the jurisdiction, it cannot be made liable for infringement of a UK patent.

Brian Cordery's presentation aims to provide an overview of cross-border patent infringement from the perspective of the UK. It will assess the three aspects of infringement – direct infringement, indirect infringement and infringement by way of joint tortfeasance. In particular it will examine leading authorities including the ruling of the House of Lords in the SABAF v Menghetti case and the Court of Appeal in Menasche v William Hill.

The presentation will assess some of the more commonly encountered tools used by patent holders to bring overseas defendants into the proceedings in the UK. It will look at specific issues regarding regulated sectors including healthcare. It will also focus on the doctrine of common design, examining some of the leading cases in this area. It will also highlight some of the unresolved issues and suggest the direction that the Court might take. Of particular interest is the forthcoming decision of Arnold J. in L'Oreal v eBay and the extent to which the host of an auction site can be liable for the authenticity of the goods sold by third parties via the site. The L'Oreal decision may also address Article 11 of the IP Enforcement Directive and the extent to which the Directive was addressed to rights as well as remedies.