



December 2015

## Dutch Appeals Court Finds Patent Invalid

The Greenberg Traurig Amsterdam office played a pivotal role in a groundbreaking judgment concerning patent litigation from The Hague Court of Appeal (the Court of Appeal), on Nov. 24, 2015. The Court of Appeal ratified a judgment of the District Court of The Hague (the District Court), which is exclusively competent in patent matters.

The facts of the case, briefly, are as follows: the plaintiff, Rhodia Opérations S.A.S., from France, was granted a European patent on Aug. 8, 2012. The patent covered, *inter alia*, the production process of vanillin (a substance of vanilla) through a so-called condensation reaction. The plaintiff alleged that the four defendants<sup>1</sup> from China offered products on the Dutch market that were directly obtained from using the patented process. The plaintiff brought an action in the Netherlands alleging patent infringement under the Dutch Patent Act (The Act). Two Chinese defendants, namely Ningbo Wanglong Technology and Wanglong Group (Wanglong), were represented by the Amsterdam office of Greenberg Traurig.

The Dutch Patent Act confers to the owner of the patent the exclusive right to sell a product resulting from the patented process on the market. The Act is generally restricted to the Netherlands and the Netherlands Antilles when it concerns a Dutch patent. However, Dutch courts have – under certain conditions – accepted extraterritorial jurisdiction when it comes to rulings on European patents. Together with the cross-border effectiveness of Dutch injunctions, this was motivation for the plaintiff to bring an action before the District Court for patent infringement.

### Rulings

In its judgment, the Court of Appeal first ruled that both it and the District Court have the power to grant a judgment in this matter regarding both the Dutch and extraterritorial claims made by the plaintiff, based on Dutch and European legislation.

<sup>1</sup> Jiaying Zhonghua Chemical Co. Ltd, Jiaying Guihua Imp & Exp Co. Ltd, Ningbo Wanglong Technology Co. Ltd and Wanglong Group Co. Ltd.

Secondly, the Court of Appeal found for the defendants, ruling that the “invention” of the patent was not inventive, and that the patent was therefore invalid.

The defendants argued that the Patents Act 1995 states that an invention is patentable if it:

- > is new;
- > involves an inventive step; and
- > is susceptible of industrial application.

In addition to these requirements, a number of other formal requirements must be met (e.g., no subject matter can be added or extended after grant). The Court’s decision came down to whether or not the patented condensation reaction to produce vanillin was “inventive.” The plaintiff argued that the process is more efficient than other processes to produce vanillin since it results in fewer byproducts. Therefore, the process should be deemed inventive.

The Court used specialized literature to make a decision. It ruled that the technique behind the condensation reaction was not “inventive”, but rather “general professional knowledge,” and thus not patentable.

### Costs

The judgment of the District Court was ratified by the Court of Appeal and the costs were awarded against the plaintiff. The awarded costs were valued on the actual costs incurred by the defendant on appeal, which includes attorneys’ fees and (the rather high) experts’ fees.

### Consequences

This judgment of the Court is an interesting one for several reasons:

- a) the District Court is authorized by the Court of Appeal to rule in a patent matter when the infringing product has been delivered on the Dutch market;
- b) plaintiffs can obtain cross-border injunctions at the District Court under certain circumstances against foreign co-defendants, which have cross-border effects; and
- c) the party ruled against can be ordered to bear the total costs incurred by the prevailing party, which includes the high fees for patent experts.

This case was handled by Lei Huang, Chinese qualified lawyer, and Radboud Ribbert, a shareholder in the IP & Entertainment practice, of Greenberg Traurig’s Amsterdam office.

This *GT Alert* was prepared by **Rutger Sterk**<sup>‡</sup>. Questions about this information can be directed to:

- > [Radboud Ribbert](mailto:ribbertr@eu.gtlaw.com) | +31 (0) 20.301.7333 | [ribbertr@eu.gtlaw.com](mailto:ribbertr@eu.gtlaw.com)
- > [Lei Huang](mailto:huangl@eu.gtlaw.com) | +44 (0) 207.371.7188 | [huangl@eu.gtlaw.com](mailto:huangl@eu.gtlaw.com)
- > Or, your [Greenberg Traurig](#) attorney

<sup>‡</sup>*Not admitted to the practice of law.*

<b>Albany</b> +1 518.689.1400	<b>Delaware</b> +1 302.661.7000	<b>New York</b> +1 212.801.9200	<b>Silicon Valley</b> +1 650.328.8500
<b>Amsterdam</b> + 31 20 301 7300	<b>Denver</b> +1 303.572.6500	<b>Northern Virginia</b> +1 703.749.1300	<b>Tallahassee</b> +1 850.222.6891
<b>Atlanta</b> +1 678.553.2100	<b>Fort Lauderdale</b> +1 954.765.0500	<b>Orange County</b> +1 949.732.6500	<b>Tampa</b> +1 813.318.5700
<b>Austin</b> +1 512.320.7200	<b>Houston</b> +1 713.374.3500	<b>Orlando</b> +1 407.420.1000	<b>Tel Aviv<sup>^</sup></b> +03.636.6000
<b>Berlin<sup>-</sup></b> +49 (0) 30 700 171 100	<b>Las Vegas</b> +1 702.792.3773	<b>Philadelphia</b> +1 215.988.7800	<b>Tokyo<sup>⌘</sup></b> +81 (0)3 3216 7211
<b>Berlin-GT Restructuring<sup>-</sup></b> +49 (0) 30 700 171 100	<b>London<sup>*</sup></b> +44 (0)203 349 8700	<b>Phoenix</b> +1 602.445.8000	<b>Warsaw<sup>~</sup></b> +48 22 690 6100
<b>Boca Raton</b> +1 561.955.7600	<b>Los Angeles</b> +1 310.586.7700	<b>Sacramento</b> +1 916.442.1111	<b>Washington, D.C.</b> +1 202.331.3100
<b>Boston</b> +1 617.310.6000	<b>Mexico City<sup>+</sup></b> +52 55 5029.0000	<b>San Francisco</b> +1 415.655.1300	<b>Westchester County</b> +1 914.286.2900
<b>Chicago</b> +1 312.456.8400	<b>Miami</b> +1 305.579.0500	<b>Seoul<sup>∞</sup></b> +1 82-2-369-1000	<b>West Palm Beach</b> +1 561.650.7900
<b>Dallas</b> +1 214.665.3600	<b>New Jersey</b> +1 973.360.7900	<b>Shanghai</b> +86 21 6391 6633	

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. <sup>-</sup>Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>-</sup> Berlin - GT Restructuring is operated by Köhler-Ma Geiser Partnerschaft Rechtsanwälte, Insolvenzverwalter. <sup>\*</sup>Operates as Greenberg Traurig Maher LLP. <sup>\*\*</sup>Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the strategic alliance firms. <sup>+</sup>Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>∞</sup>Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. <sup>^</sup>Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. <sup>⌘</sup>Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>~</sup>Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2015 Greenberg Traurig, LLP. All rights reserved.*