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## Why Did Memjet Sue HP in Germany?

March 29, 2016

*Editor's note: This article originally appeared in the December issue of motio, the magazine of the German reprographics association. It is translated and published here with permission.*



Attorney Dr. Johann-Christoph Gaedertz

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### **Attorney Dr. Johann-Christoph Gaedertz explains the legal background of the HP-Memjet patent dispute.**

All over the world the print industry is asking why Memjet struck against Hewlett-Packard in Germany. We posed that question to a renowned attorney with experience in patent issues. Dr. Johann-Christoph Gaedertz from Frankfurt am Main is a partner in the law firm Keil & Schaafhausen, which specializes in the protection of intellectual property. He has handled a multitude of patent cases.

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### **Q: Why was the temporary injunction issued in Germany and not where HP's headquarters are located, in the U.S.?**

**A:** For some years, Germany has been the preferred country internationally for patent disputes. That is largely due to the specialized patent dispute chambers in the district courts in Dusseldorf, Mannheim, Hamburg and Munich. In the international sphere, the German civil court system is very efficient, fast and unbeatably affordable. Preliminary injunctions in patent law cases are almost never issued in the U.S., UK or elsewhere, not to mention injunctions without an oral hearing or within a few days. But also in Germany that is not so often the case, and is applied only in relatively clear cases.

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### **Q: Why did Memjet select the Munich court and not the court in Stuttgart, which is more appropriate for HP?**

**A:** In each state of Germany there is just one court specifically designated for patent law. For Baden-

Wurttemberg that is the district court in Mannheim. However, this court is reluctant when it comes to preliminary injunctions. Munich has two patent law chambers that have developed Munich as a forum for patent law cases in a very dedicated and knowledgeable way. In patent law disputes one can file a case in any of these specialized chambers of the various German states if the disputed product is offered, advertised, sold or used in the district of the court. That's why Memjet was able to select the court in Germany. Sometimes it is also the preference of the acting lawyers and patent attorneys. We like to go to Munich as well, but of course also to Mannheim or Dusseldorf.

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**Q: Can the court simply decide without hearing the defendant HP?**

**A:** Yes, in preliminary injunctions there is based on our civil procedure code the possibility for at least 50 years to decide without an oral hearing and without the defendant being heard. That is a quite common proceeding. For the protection of intellectual property the process has to go quickly. That is the most efficient law enforcement conceivable. As a corrective measure, the legislature provides for a damage claim against the applicant of an injunction if it is executed and proves later on in the main proceedings that preliminary injunction was not justified. Memjet's action is, thus, quite pushy.

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**Q: Which legal options does HP now have at its disposal in Germany?**

**A:** They can file an appeal against the preliminary injunction. Then, there will be oral hearing and a judgment is rendered thereafter which either revokes the preliminary injunction or confirms it. This judgment can then be appealed to the Court of Appeals.

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**Q: What are the consequences of the preliminary injunction for the market?**

**A:** From the day when the preliminary injunction is served and executed, HP can no longer offer, advertise, or sell the product. Also, even though the preliminary injunction only has effect on HP, the commercial users of the equipment must be aware that they also violate the patent. Regarding their further activities, they should get legal advice or should stop the use and sale of the equipment for the time being.

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