

**Hendrik Fügemann, Claire F. Danielsson, Neil Gallagher, Economic Implications of Automatic Injunctions in German Patent Litigation – Bargaining, Settlement Outcomes and Patent Valuation, Copenhagen Economics, August 2019, pp.1-34**

In German litigation the so-called automatic injunction shifts the bargaining power between a patentee (plaintiff) and an implementer (defendant) relative to a litigation framework or a typical bilateral license negotiation without threat of automatic injunction. The automatic injunction has predictable economic implications for settlement behaviour of the parties. The defendant risks losing the right to use, make or sell its own end-product due to an automatic injunction, irrespective of where the infringement is occurring within its supply chain, because the patentee has the right to select the place in a vertical where it wishes to litigate. Unlike in litigation without automatic injunctive relief or in a bilateral negotiation, re-design may be unavailable to the defendant due to time constraints under the German system, and thus the only practical way to avoid an injunction is a settlement between the plaintiff and defendant. Thus, a defendant risks the loss of the full value of its end-product, i.e. its entire revenue and profit from the sale of its end-product, upon an automatic injunction. This risk can be anticipated by the plaintiff.

However, because both the plaintiff and the defendant are aware that the defendant bears this risk, the plaintiff does not need to constrain its settlement terms to the value of the patent, as in a typical negotiation. This results in a different outcome relative to the case with automatic injunction. In fact, the parties may not need to even consider the economic value of the infringed patent. As a result, the price of settlement may surpass the economic value of a patented

invention by far and may even approach the value of the defendant's product.

The authors explain the economic theory related to bargaining and this shift as a result of the threat caused by automatic injunction and provide a case study based on a dispute and settlement between Broadcom and Volkswagen and Audi. Consistent with economic theory, the authors find no connection between the expected settlement value and the value of the Broadcom patent.