



Over 80 Years of IP Excellence

Should your Intellectual Property Lawsuit be heard before a District or Magistrates' Court?

February 26 , 2019

Be sure that careful planning is given before deciding on the right venue for hearing a suit brought in intellectual property matters.

The issue was once again raised as to a court's subject-matter jurisdiction to hear a suit concerning intellectual property. Two rulings were handed down, one by the Tel Aviv District Court in *Eliyahu*^[1] and the other by the Netanya Magistrates' Court in *Shavit*^[2], where the courts had to address the court's subject-matter jurisdiction over an action brought on intellectual property legislative grounds. In both cases, briefly described below, the claims were moved from the court the suit was filed with to the proper competent court, and the court in both cases imposed expenses on the plaintiff which erred in its selection of venue.

Eliyahu concerned a lawsuit filed to the Tel Aviv District Court. The plaintiff sought a declarative order with respect to the existence of a partnership between him and the defendant, on the ground that the plaintiff has a right to his portion of the royalties issued to the defendant by virtue of his copyrights in six records produced jointly by the parties (according to the plaintiff). The amount of the claim stood at ILS 500,000 (or ILS 440,000 on the ground of there being a right to adequate remuneration).

The defendant's motion to change venue to the magistrates' court for case deliberation was sustained. The district court delivered an analysis of the germane sections in the law, including section 40(4) of the Courts Law [consolidated version], 1984, and held that the jurisdictional issue should be addressed on the basis of the value of the relief sought, even where the plaintiff is seeking declarative or mandatory injunctive relief unless such relief's value cannot be estimated. Hence, in this case, since the value of the relief sought, including the declaratory relief, does not exceed ILS 500,000, the claim is to be heard before the magistrates' court.

Shavit concerned a lawsuit filed to the Netanya Magistrates' Court and was based on the claim that the defendant infringed the plaintiff's trademark rights. The plaintiff petitioned for a permanent injunction against the infringement and sought ILS 300,000 in compensation. The Netanya Magistrates' Court granted the defendant's request to transfer the suit to the district court, based on the determination that when permanent injunctive relief is sought in respect of intellectual property alongside pecuniary relief for trademark infringement under the Trademarks Ordinance, which is an intellectual property matter, then the district court is the competent authority for hearing the entire case. In its decision, the magistrates' court did not address the question as to the value of the permanent injunctive order sought by the plaintiff, which apparently stemmed from the assumption that this relief cannot be estimated and thus fell within the district court's residual jurisdiction.

These two recent judgments, proximate in their issuance by different courts, are demonstrative of the

need for careful planning when it comes to formulating the remedies plaintiffs seek when filing their lawsuit. When relief whose value cannot be monetarily estimated is sought, it is important to explicitly note it in the statement of case; the claim will otherwise, in the district court's view in *Eliyahu*, be moved to the magistrates' court (if not filed there at the outset), insofar as the pecuniary relief falls under this court's subject-matter jurisdiction.

Wielding established principles set forth in the relevant legislation and case law for selecting the proper venue saves both time and resources, among others. Moreover, when drawing up a claim concerning intellectual property, one must keep in mind specific provisions in the law granting the district court authority over particular subject matters, such as section 46 of the Partnerships Ordinance, section 188 of the Patents Law and others.

Orit Gonen

Adv., Partner



Orit Gonen is a partner at Gilat, Bareket & Co.

Eran Bareket

Adv., Senior Partner



Eran Bareket is a senior partner at Gilat, Bareket & Co.

[1] CF 10381-07-18 *Eliyahu v. Mantin* (published on *Nevo* 28 Nov 2018).

[2] CF 25403-09-17 *Shavit v. Djibri* (published on *Nevo* 9 Dec 2018).

These newsletters are provided for general information only. It is not intended as legal advice or opinion and cannot be relied upon as such.