

International Bar Association Conference

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How to Structure an International Sales Contract

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Possible claims of Reckless vs ...

- Hopeful Hinge bv
for breach of exclusivity commitment
- Hopeful Hinge (Schweiz) AG
for breach of exclusive supply agreement
- Hobson's Choice Chimique SAS
for patent infringement

Hopeful Hinge by

- Breach of exclusivity commitment
- Force majeure clause
- Exclusive and sole license

Exclusive and sole license

“The license granted hereunder shall be

(1) an exclusive license for [countries];

(2) a sole license for [countries];

(3) a non-exclusive license for [countries].

Licensor shall have these licenses registered at the relevant registers as permitted. Any relevant official fees shall be borne by Licensor.”

Hopeful Hinge (Schweiz) AG

- Breach of exclusive supply agreement
- Breach of storage obligation
- Force majeure clause

Force majeure clause

“Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.”

Hobson's Choice Chimique SAS

- Patent infringement
- Patent licensee
- Patent infringement proceedings

Infringement and invalidity proceeding

“In the event any of the patents subject to hereto is infringed by a third party the following shall apply:

- (1) In respect of infringements committed in [countries] Licensee shall be entitled and obliged, at its expense, to forthwith prosecute the same by forwarding a warning notice and, if required, take action before the courts.*
- (2) In respect of infringements committed in [countries] Licensor shall be obliged, at its expense, to forthwith prosecute the same by forwarding a warning notice and, if required, take action before the courts. Any conclusion of settlements and decision against continuing court proceedings shall be subject to Licensee’s approval.*
- (3) If the infringer is held liable to effect payments the relevant amount shall be shared in a ratio of x:x (Licensor:Licensee).*
- (4) If a third party takes any action against any of the patents subject hereto, in particular against its legal validity, Licensor shall be obliged, at its expense, to defend the relevant patent. ”*