

International Jurisdiction of the Unified Patent Court after BSH Hausgeräte v. Electrolux

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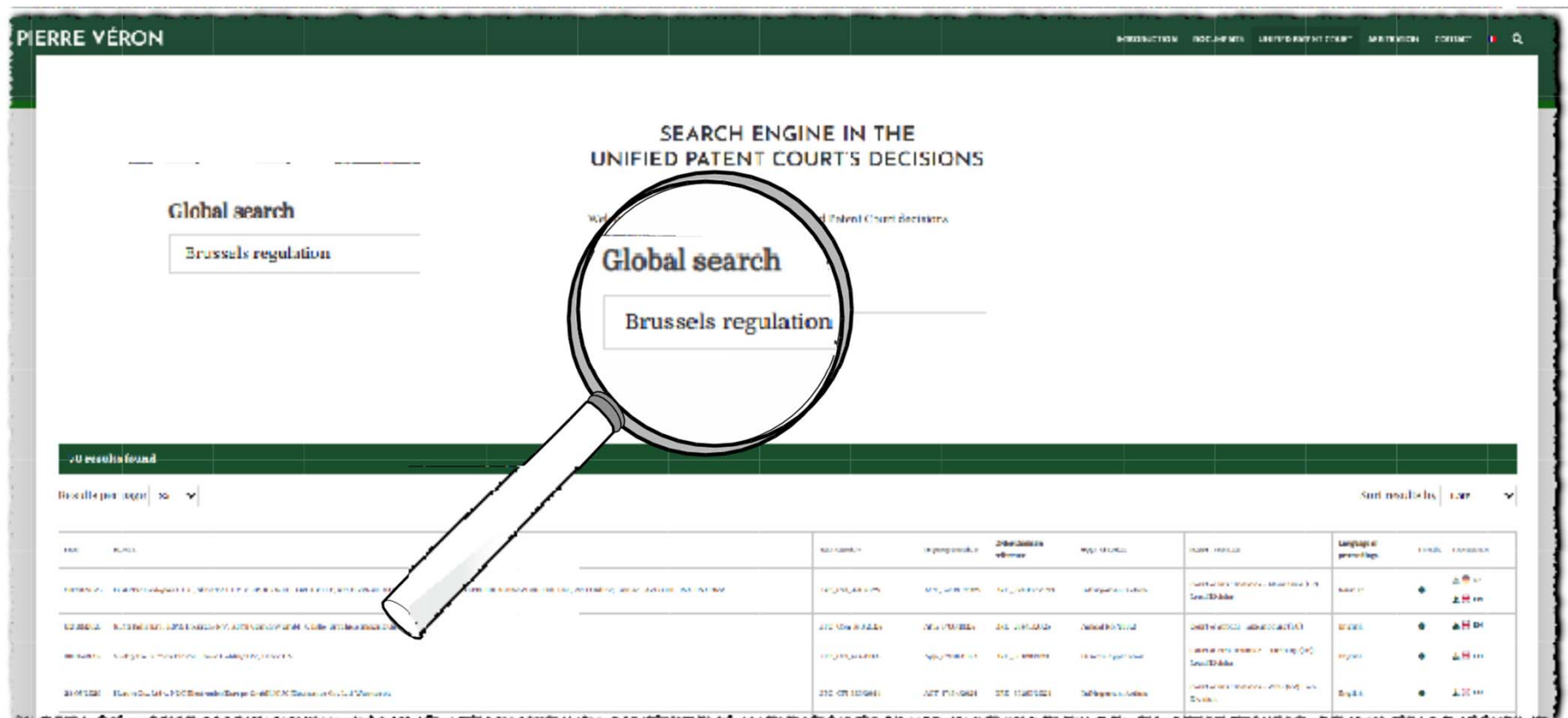


Overview

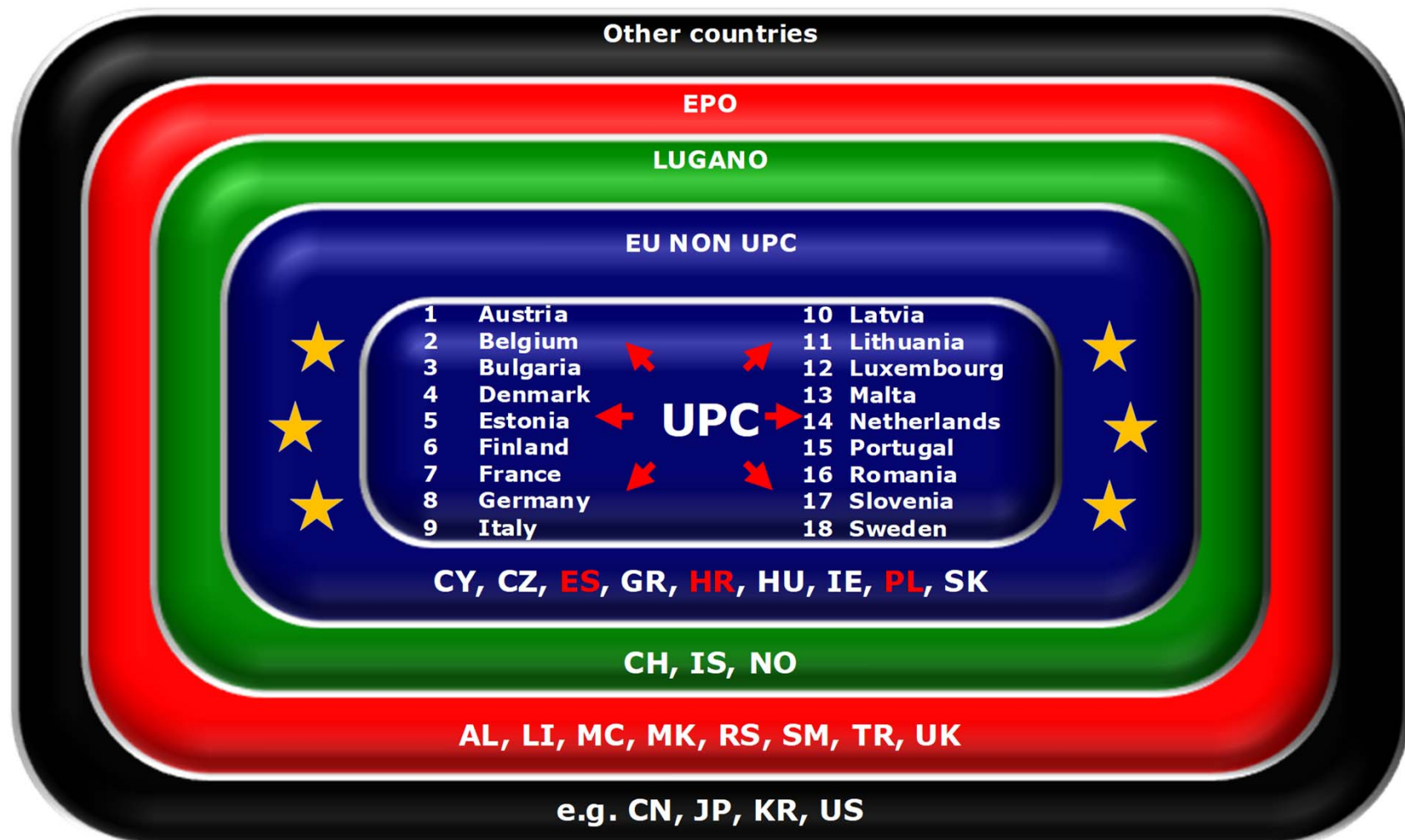
- BSH Hausgeräte GmbH v Electrolux AB
Case C-339/22 CJEU (Grand Chamber)
25 February 2025
- Perspective for the French courts
- UPC judgments in the wake of BSH
- Prospects for the UPC

Full text search engine in the UPC decisions (all translated into English)

1000+
decisions



The 5 judicial areas surrounding the UPC



Summary of Brussels I bis Regulation

International Jurisdiction of the Unified Patent Court (1/2)

- In case of infringement of a European Patent, an alleged infringer domiciled in the EU can be sued in the courts of:
 - ▶ the domicile of defendant [Art. 4]
 - ▶ the place of infringement [Art. 7 (2)]
 - ▶ where he is one of a number of defendants, in the courts for the place where any one of them is domiciled when the claims are closely connected [Art. 8 (1)]
- The UPC shall have jurisdiction where, under Regulation Brussels I bis, the courts of a Member State party to the UPC Agreement would have jurisdiction in a matter governed by that Agreement [Art. 71b (1)]

Summary of Brussels I bis Regulation

International Jurisdiction of the Unified Patent Court (1/2)

Art. 24 (4) Brussels I Regulation

"The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

...

(4) in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of an instrument of the Union or an international convention deemed to have taken place."

BSH Hausgeräte GmbH v Electrolux AB Case C-339/22 CJEU (Grand Chamber) 25 February 2025

[The judgment of](#) the Court of Justice of the European Union (Grand Chamber) in BSH Hausgeräte GmbH v Electrolux AB of 25 February 2025 (Case C-339/22) lays down two rules of interpretation of the [Brussels I bis Regulation](#) important for international patent litigation:

- **the court of the Member State of the defendant's domicile** hearing an action for infringement of a patent granted in another Member State **shall continue to have jurisdiction to hear that action where the defendant disputes the validity of that patent**
- **the rule of exclusive jurisdiction** of the courts of the State which granted the patent **does not apply to a court of a third State** and does not confer any jurisdiction on those courts with regard to assessing the validity of a patent granted by that State

BSH Hausgeräte GmbH c/ Electrolux AB

Facts and procedure

- The Swedish case
- The German case
- The case C-339/22 before the CJEU

BSH v Electrolux (vacuum cleaner) EP 1 434 512

Sweden



- BSH sues Electrolux for infringement of its patent EP 1 434 512 for SE, AT, DE, ES, FR, UK, GR, NL and TR
- Electrolux argues that the patent is invalid and that, as a result, the Swedish courts have no jurisdiction to rule on BSH's infringement action (except for Sweden); Electrolux relies on the case law illustrated by the English decision of *Laddie J. Coins Control v. Suzo* [1997] 3 All E.R. 45, according to which the question of validity is crucial in the event of an infringement claim, so that if the court does not have jurisdiction on validity, it cannot rule on infringement.

BSH v Electrolux (vacuum cleaner) EP 1 434 512

Sweden



- 1st instance: 21 December 2020, Patent- och marknadsdomstolen (Industrial Property and Commercial Court, Sweden) declares that it has no jurisdiction to rule on the infringement claim for the non-Swedish parts of patent EP 1 434 512.
- Svea hovrätt, Patent- och marknadsöverdomstolen (Court of Appeal, Stockholm), 24 May 2022 refers three questions to the CJEU for a preliminary ruling...

The three questions referred by the Swedish Court of Appeal for a preliminary ruling

'(1) Is Article 24(4) of [the Brussels I bis Regulation] to be interpreted as meaning that the expression "proceedings concerned with the registration or validity of patents ... irrespective of whether the issue is raised by way of an action or as a defence" implies that a national court, which, pursuant to Article 4(1) of that regulation, has declared that it has jurisdiction to hear a patent infringement dispute, no longer has jurisdiction to consider the issue of infringement if a defence is raised that alleges that the patent at issue is invalid, or is the provision to be interpreted as meaning that the national court only lacks jurisdiction to hear the defence of invalidity?

(2) Is the answer to Question 1 affected by whether national law contains provisions, similar to those laid down in the second subparagraph of Paragraph 61 of the [Law on patents], which means that, for a defence of invalidity raised in an infringement case to be heard, the defendant must bring a separate action for a declaration of invalidity?

(3) Is Article 24(4) of the [Brussels I bis Regulation] to be interpreted as being applicable to a court of a third [State], that is to say, in the present case, as also conferring exclusive jurisdiction on a court in [Türkiye] in respect of the part of the European patent which has been validated there?'

Subsequent national decisions

BSH Hausgeräte (vacuum cleaner) EP 1 434 512

■ Sweden

- patent (SE) revoked at 1st instance

September 2024 *Svea Hovrätt Patent- and marknadsdomstol (PMD) Stockholm*

- appeal pending before the Court of Appeal (Stockholm)

■ Germany

- patent (DE) revoked at 1 instance

24 September 2020 *Bundespatentgericht, 5 Ni 25/18 (EP)*

- patent (DE) upheld on appeal

31 January 2023 *Bundesgerichtshof, X ZR 19/2*

- Infringement claim pending before the *Landgericht Düsseldorf*

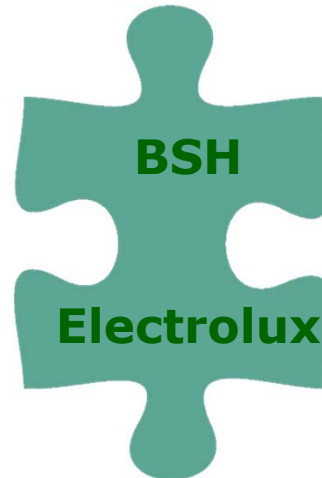
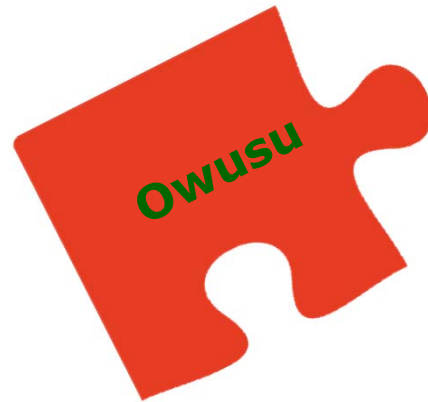
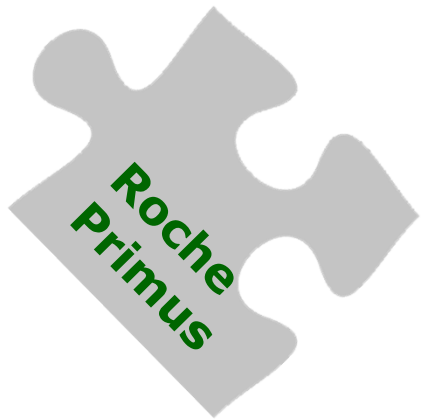


BSH Hausgeräte GmbH v Electrolux AB

Proceedings before the CJEU

- 24/05/2022 [Reference for](#) a preliminary ruling
- 22/06/2023 1st oral hearing
- 22/02/2024 [1st opinion](#) AG Nicholas Emiliou
- 16/04/2024 [Order](#) referring the case back to the Grand Chamber and reopening the proceedings (7 questions referred by the Court of Justice on the 3rd question concerning the reflex effect)
- 14/05/2024 2nd oral hearing
- 05/09/2024 [2nd opinion](#) AG Emiliou
- 25/02/2025 [Judgment](#)
(Judge-Rapporteur Octavia Spineanu-Matei)





Previous decisions of the CJEU



- 15/11/1983 Duijnstee + 08/09/2022 Irnova (employee/employer disputes over the ownership of the invention are not disputes "*relating to the registration or validity of patents*")



- 07/03/1995 Fiona Shevill (the court seised as the court for the place where the harmful event occurred has jurisdiction **only** in respect of the damage caused in the State in which it has its seat)



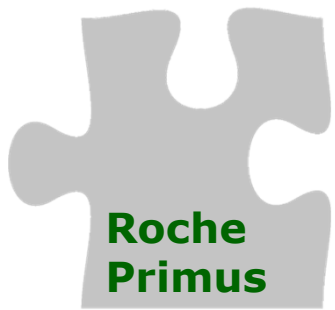
- 01/03/2005 Owusu (a court with jurisdiction under the Brussels Ia Regulation may not decline jurisdiction on the ground that a court in a non-EU State would be better placed to hear the case; **exclusion of *forum non conveniens***)

Previous decisions of the CJEU



- 13/07/2006 Gat v Luk (the exclusive jurisdiction rule in Article 24(4) concerns all disputes relating to the registration or validity of a patent, whether the issue is raised by way of action or objection)
- This judgment decides (unfortunately) that the infringement judge cannot hear a plea of invalidity (it being understood that Article 24(4) prohibits him from hearing a counterclaim for invalidity).
- This solution was (unfortunately) codified when the Brussels I bis Regulation was recast in 2012.
- However, this decision certainly did not state that the court hearing the infringement action loses its jurisdiction to rule on this action if the invalidity of the patent is invoked.

Previous decisions of the CJEU



- 13/07/2006 Roche v Primus (impossibility of invoking the plurality of defendants under Article 8 in the case of multinational infringement committed by different companies in different States, even if they belong to the same group; exclusion of the Dutch "*spider in the web*" caselaw)

Previous decisions of the CJEU



- 12/07/2012 Solvay v Honeywell, para 1 (*"a situation in which two or more companies established in different Member States are each separately accused, in proceedings pending before a court of one of those Member States, of infringement of the same national part of a European patent, as in force in another Member State, by reason of reserved acts relating to the same product, is likely to lead to irreconcilable solutions if the cases were tried separately, within the meaning of that provision"*)
- 12/07/2012 Solvay v Honeywell, paragraph 2 (*Article 22(4) of the Regulation does not preclude the application of Article 35 of the Regulation, which provides that "Application may be made to the courts of a Member State for such **provisional, including protective, measures as may** be available under the law of that State, even if the courts of another Member State have jurisdiction as to the substance of the matter"*).

Previous decisions of the CJEU

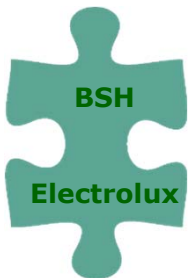


- 25/10/2012 Folien Fischer v Ritrama (an action for a negative declaration falls under Article 5(3) of the Brussels Ia Regulation; an action for a declaration of non-infringement may therefore be brought not only before the court of the domicile of the right holder, but also before the court of the Member State in which the patent has effect)

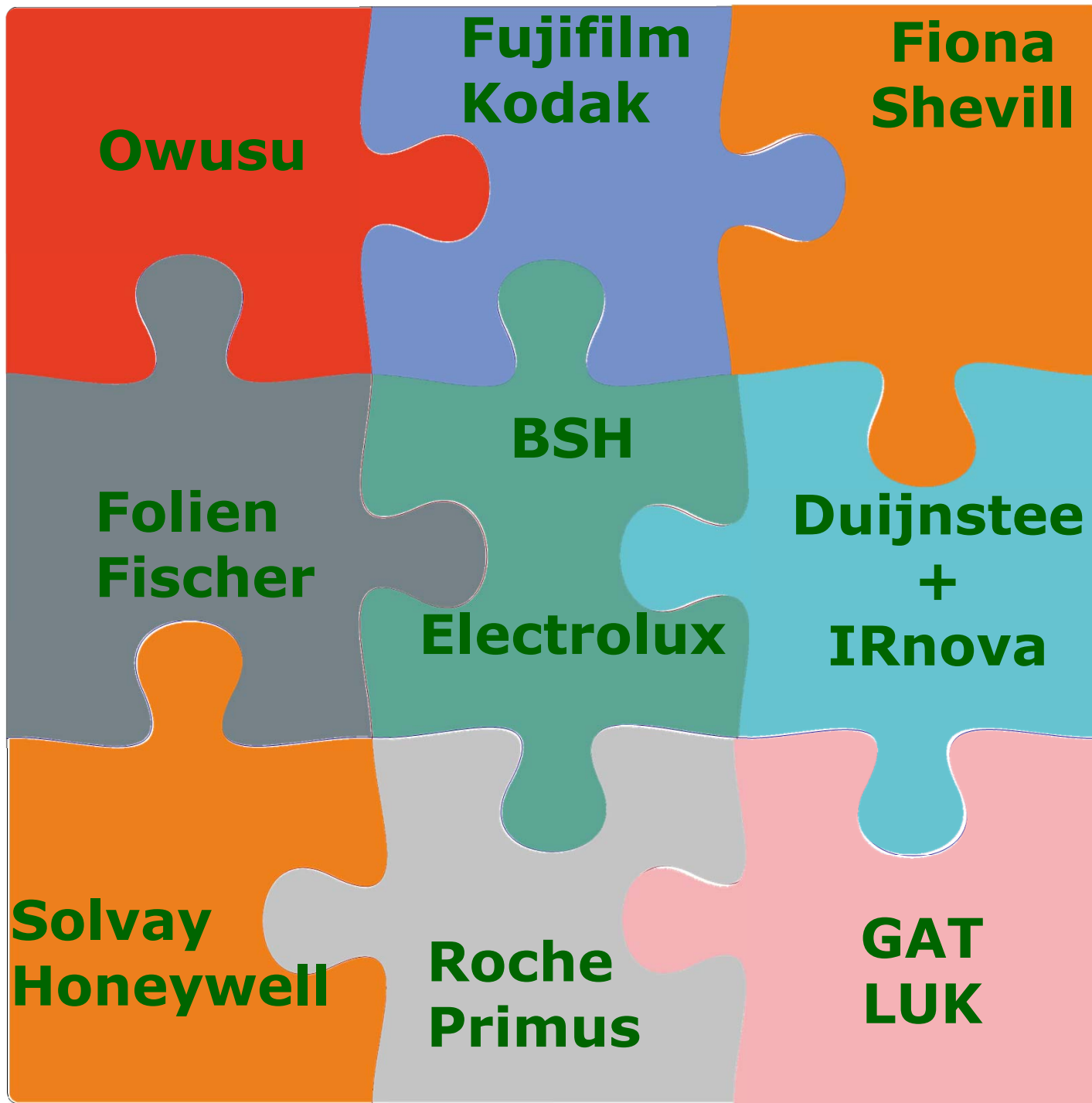
Comparison Gat v Luk with BSH v Electrolux



- 13/07/2006 Gat v Luk *"the rule of exclusive jurisdiction (of art. 24, 4) concerns all disputes relating to the registration or validity of a patent, whether the question is raised by way of action or objection"*.



- 25/02/2025 BSH v Electrolux *"a court of the Member State of domicile of the defendant which is seised, pursuant to Article 4(1) of that regulation, of an action alleging infringement of a patent granted in another Member State, does still have jurisdiction to hear that action where, in the context of that action, that defendant challenges, as its defence, the validity of that patent, whereas the courts of that other Member State have exclusive jurisdiction to rule on that validity"*.



What the BSH v Electrolux judgment says

1: European Union

- 25/02/2025 BSH v Electrolux *"a court of the Member State of domicile of the defendant which is seised, pursuant to Article 4(1) of that regulation, of an action alleging infringement of a patent granted in another Member State, does still have jurisdiction to hear that action where, in the context of that action, that defendant challenges, as its defence, the validity of that patent, whereas the courts of that other Member State have exclusive jurisdiction to rule on that validity"*.
- Contrary to the case law illustrated by the English decision of Laddie J. *Coins Control v. Suzo* [1997] 3 All E.R. 45 deciding that, whenever the defendant challenges the validity of the patent in suit, the courts of countries other than that which granted the patent lose jurisdiction

What the BSH v Electrolux judgment says 1: European Union (ct'd)

- *"51... If it considers it justified, in particular where it takes the view that there is a reasonable, non-negligible possibility of that patent being declared invalid by the court of that other Member State that has jurisdiction (see, by analogy, judgment of 12 July 2012, Solvay , C-616/10, EU:C:2012:445, paragraph 49), the court seised of the infringement action may, where appropriate, stay the proceedings, which allows it to take account, for the purpose of ruling on the infringement action, of a decision given by the court seised of the action seeking a declaration of invalidity."*

The BSH v Electrolux judgment with respect to the EU: a destroyer against torpedoes?

- *"51... the court seised of the infringement action may, where appropriate, stay the proceedings".*
- The court hearing the infringement action is thus not obliged to stay proceedings if an action for invalidity is brought before the competent court: an action for invalidity is therefore no longer an unstoppable torpedo.
- But the court hearing the infringement action is undoubtedly required to stay the proceedings if an action for a declaration of non-infringement is pending ([CJEU, 25 October 2012, Folien Fischer v Ritrama C-133/11](#)): can the infringement action be torpedoed by an action for a declaration of non-infringement based on the invalidity of the patent?

The BSH v Electrolux judgment with respect to the EU only concerns jurisdiction based on the defendant's domicile

- **BSH does not concern the case where the court's jurisdiction is justified solely because it is the place of the infringement** (Article 7(2) of the Brussels I bis Regulation); the Fiona Shevill case law is not affected; with respect to an EU domiciled defendant, the court of the place of infringement only has jurisdiction with respect to the damage caused in the Member State where it has its seat.
- **BSH does not concern multiple defendants** (Article 8(1) of the Brussels I bis Regulation): Roche v Primus and Solvay v Honeywell are not affected.

What the BSH v Electrolux ruling says about third States (outside EU)

25/02/2025 BSH v Electrolux " Article 24(4) of Regulation No 1215/2012 must be interpreted as not applying to a court of a third State and, consequently, as not conferring any jurisdiction, whether exclusive or otherwise, on such a court as regards the assessment of the validity of a patent granted or validated by that State. If a court of a Member State is seised, on the basis of Article 4(1) of that regulation, of an action alleging infringement of a patent granted or validated in a third State in which the question of the validity of that patent is raised, as a defence, that court has jurisdiction, pursuant to Article 4(1), to rule on that defence, its decision in that regard not being such as to affect the existence or content of that patent in that third State or to cause the national register of that State to be amended. "

Decoding BSH v Electrolux about third States (outside EU)

- **Rejection of the “*reflex effect*”**
(no transposition to the courts of non-EU Member States of the rules of jurisdiction laid down by the Brussels I bis Regulation for the courts of EU Member States)
A very important issue for specialists in European private international judicial law
- **Possibility for an EU court to rule on the validity of a patent that does not cover the EU by means of a decision with effect only *inter partes***

What the BSH v Electrolux judgment says inside and outside the European Union

- In the EU, **the fact that a national procedural rule** (like in SE) **requires the defendant to bring a separate action for invalidity of the patent has no bearing on whether the court hearing the infringement action retains jurisdiction** where the defendant challenges, by way of exception, the validity of the patent, but the court hearing the infringement action cannot invalidate the patent.
- How does this decision fit in with Rule 25(1) of the UPC Rules of Procedure?
"1. 1. If the Statement of defence includes an assertion that the patent alleged to be infringed is invalid the Statement of defence shall include a Counterclaim against the proprietor of the patent for revocation of said patent in accordance with Rule 42 "

What the BSH v Electrolux judgment says about third States (outside EU)

- Outside the EU, the court hearing the infringement action may declare the patent invalid by a decision that has effect only *inter partes*.
- This is the solution under French law for arbitration awards that may rule *inter partes* on the validity of the patent

[CA Paris, 28 February 2008 : Liv Hidravlika, RG n° 05/10577](#)

Perspectives for the French courts (1)

- As early as 28 January 1994, the Paris Court of Appeal, in its [Eurosensory v Tieman judgment](#), ordered the exequatur in France of a Dutch decision enjoining a Japanese defendant not to infringe a European patent in France and in other countries.
- France was therefore ahead of the game in recognising the possibility of a foreign court ruling on infringement of a French patent.

Perspectives for the French courts (2)

In 2022, the *Cour de cassation* recalled that Article 14 of the Civil Code allows a French plaintiff to bring a foreign patent infringement claim against a foreign defendant (domiciled outside the EU) before the French courts:

"A foreigner, even one not resident in France, may be summoned before the French courts for the performance of obligations contracted by him in France with a French person; he may be brought before the French courts for obligations contracted by him in a foreign country with French persons."

Perspectives for the French courts (3)

- The Hutchinson decision overturned a decision by the Paris Court of Appeal, which had declared that it did not have jurisdiction to hear a claim for infringement of a German patent and a UK patent against a South African company:
"It follows from (Article 14 of the Civil Code) that a French plaintiff, when no ordinary criterion of jurisdiction is met in France, may validly bring proceedings before the French court that he chooses because of a link connecting the proceedings to French territory, or, failing that, according to the requirements of the proper administration of justice."
[Cass. civ. 1, 29 June 2022, 21-11.085, Hutchinson v. Dal, Global Wheel, VI and Tyron](#)
- Here again, France was ahead of the game

Perspectives for the French courts (4)

- The *Cour de cassation*'s Hutchinson judgment also ruled on the question of multiple defendants in the light of *Solvay v Honeywell* (2nd point):
"In so ruling, while Hutchinson relied on infringements by French companies and Tyron, in France, Germany and the UK, of the same national parts of its European patent relating to the same product, the Court of Appeal, whose task it was to determine whether the separate adjudication of the infringement actions was likely to lead to irreconcilable solutions, violated (Article 8(1) of the Brussels Ia Regulation)".
and the referring court ruled, Paris, 11 October 2024 RG no. 22/16203, that this was indeed the case
- Once again, France was ahead of the game.

UPC judgments in the wake of BSH

Side issues

Territorial scope of the injunction

- [19/08/2024 Sibio v. Abbott](#), Court of Appeal UPC_CoA_388/2024
The Court of Appeal refuses to order enforcement of a decision in Ireland, not because the Unified Patent Court has no jurisdiction to give a decision in respect of Ireland, but because the claimant had only sought a prohibition "*for the territory of the Contracting Member States in which the patent is in force*" and because Ireland, which has not ratified the UPC Agreement, is not yet a "*Contracting Member State*"
- [04/03/2025 Sumi Agro v. Syngenta](#) Court of Appeal UPC_CoA_523/2024
The Court of Appeal accepts the addition of Romania on appeal in the territorial scope of the injunction, because Romania ratified the UPC Agreement during the course of the proceedings

Application by UPC of Article 7 Brussels I bis Regulation (place of infringement)

- [03/09/2024 Aylo Freesites Ltd, Aylo Billing Limited , Aylo Premium Ltd v. Dish Technologies L.L.C., Sling TV L.L.C, UPC_CoA_188/2024, APL_21943/2024, ORD_42716/2024, Appeal RoP220.2, Court of Appeal - Luxembourg \(LU\)](#)

Art. 7(2) in conjunction with Art. 71b(1) of the Brussels I recast Regulation must be interpreted as meaning that the UPC has international jurisdiction in respect of an infringement action where the European patent relied on by the claimant has effect in at least one Contracting Member State and the alleged damage may occur in that particular Contracting Member State. Where the damage is allegedly caused via the internet, the likelihood of such damage may arise from the possibility of obtaining products and/or using services from an internet site accessible within the territory of the Contracting Member State where the European patent has effect.

The identification of the place where the harmful event occurred or may occur within the meaning of Art. 7(2) of the Brussels I recast Regulation, does not depend on criteria which do not appear in this provision and which are specific to the examination of the merits, such as the conditions for establishing an indirect infringement within the meaning of Art. 26 UPCA.

The place "where the actual or threatened infringement has occurred or may occur" as referred to in Art. 33(1)(a) UPCA must be interpreted in the same way as the place "where the harmful event occurred or may occur" of Art. 7(2) of the Brussels I recast Regulation is interpreted in relation to alleged patent infringements.

Application by UPC of Article 7 Brussels I bis Regulation (place of infringement)

- [18/12/2024 Yves Prevoo, Easee Holding B.V., Easee B.V. v. Visibly Inc.](#), UPC_CFI_525/2024, App_58871/2024, ORD_60677/2024, Preliminary objection, Court of First Instance - Hamburg (DE) Local Division
"An alleged patent infringement is a matter of tort, delict or quasi-delict in the meaning of Art. 7 sub (2) of the Brussels I recast Regulation. Thus, the UPC has jurisdiction also for claims based on personal (director) liability with regards to an alleged infringement of a European patent under Article 32 UPCA.
Whether the director of a company can be successfully sued before the UPC and held liable for the infringement of a patent is a liable is a question of the merits of the case which is not subject to the determination of jurisdiction and competence."
- [17/03/2025 Daedalus Prime LLC v. MediaTek Inc., Xiaomi](#), UPC_CFI_169/2024, App_66363/2024, ORD_67603/2024, Preliminary objection, Court of First Instance - Hamburg (DE) Local Division
"1. According to Art. 31 UPCA in conjunction with Brussels-Ia-Regulation the UPC has international jurisdiction where the courts of a Contracting Member State would have jurisdiction under the Brussels-Ia-Regulation.
2. According to Art. 71b (2) Brussels-I bis-Regulation in conjunction with Art. 7(2) Brussels-I bis-Regulation, the UPC has international jurisdiction, regardless of the Defendant's place of residence, for all patent infringements committed in a UPC Member State."

In the wake of BSH

Pioneer Düsseldorf Local Division

- [28/01/2025 Fujifilm v. Kodak](#), DL Düsseldorf UPC_CFI_355/2023

One month before BSH, the Local Division Düsseldorf accepts UPC's jurisdiction to rule on an infringement claim concerning the United Kingdom;

"If the defendant is domiciled in a Contracting Member State (here: Germany), the Unified Patent Court has jurisdiction to hear the infringement action in respect of the UK part of the patent in suit. This also applies if the defendant has filed a counterclaim for revocation in respect of the German part of the patent in suit. Even then, as regards the infringement action concerning the United Kingdom, the Unified Patent Court has jurisdiction to hear the case."

But it dismisses the action because it considers the patent invalid for the contracting Member States (the patent is revoked for all Contracting Member States); for the UK, the court holds that this patent cannot be the legal basis for an action for infringement:

"Even if the Court cannot decide on the validity of the UK part of the patent in suit, and certainly cannot revoke that part, the infringement action cannot be successful in such a factual and legal situation"

In the wake of BSH

Circumspect Mannheim Local Division

- 11/03/2025 Hurom v. NUC, Warmcook, LD Mannheim

Shortly after BSH, the Local Division Mannheim takes a more circumspect approach:

- ▶ disjunction for ES, PL, TR, UK to allow the parties to explain the BSH v Electrolux judgment
- ▶ inadmissible for TR vis-à-vis manufacturer KR for lack of detailed allegation of infringement in TR

Hurom v. NUC [UPC CFI 162/2024 ORD 11863/2025](#)

Hurom v. NUC [UPC CFI 162/2024 ACT 17365/2024 ORD 68864/2024](#)

Hurom v. NUC, WARMCOOK [UPC CFI 159/2024 ORD 11865/2025](#)

Hurom v. WARMCOOK, NUC [UPC CFI 159/2024 ACT 17336/2024 ORD 68865/2024](#)

In the wake of BSH

Liberal Munich Local Division

- [18/03/2025 Roku Inc, Roku International B.V. v. Dolby International AB](#), UPC_CFI_235/2024, App_45195/2024, ORD_69038/2024, Preliminary objection, Court of First Instance - Munich (DE) Local Division

takes a liberal approach as to the level of evidence of infringement required to accept jurisdiction in a given country:

"The alleged incompatibility of the legal bases of the UPC Agreement, in particular the provisions of the UPCA, with the requirements of European primary law in the form of the TEU and the TFEU, and the alleged invalidity of the UPC Agreement resulting from this, is not a ground for objection within the meaning of Rule 19 (1) RoP.

Nor can an objection pursuant to Rule 19(1) RoP be successfully based on a possible violation of Art. 47(2) EU CFR or Art. 6(1) sentence 1 ECHR.

For jurisdiction to be assumed, it is not necessary for an infringement to have actually occurred or to be imminent. Rather, the plaintiff's conclusive assertion that an act of infringement giving rise to jurisdiction has taken place and that this cannot be ruled out from the outset is sufficient for the examination of jurisdiction."

In the wake of BSH

BSH-Adherent Paris Local Division

- [21/03/2025 Mul-T-Lock France, Mul-T-Lock Suisse v. IMC Créations](#), UPC_CFI_702/2024, App_10014/2025, ORD_11997/2025, Preliminary objection, Court of First Instance - Paris (FR) Local Division

The Local Division Paris is the first to directly apply and quote BSH:

"20. The solution set out in the CJEU's judgment of 25 February 2025 applies in this case to the Spanish part of the patent and to the UK part of the patent. It can also be transposed to the Swiss part of the European patent, in the case of a dispute between the UPC (assimilated to a court a Member State of the European Union) and a State bound by the Lugano Convention to which article 31 of the UPCA refers, which establishes the same jurisdiction in principle of the courts of the defendant's domicile and the same exceptions, regard to the registration or validity of the patent, pursuant to its articles 22(4) and 25, when the validity of the patent is at stake."

In the wake of BSH

Lateness Indulgent Court of Appeal

- [11/04/2025 Supponor Italia SRL, Supponor Limited, Supponor España SL, Supponor Oy, Supponor SASU v. AIM Sport Development AG](#), UPC_CoA_169/2025, APL_9191/2025, ORD_14767/2025, Appeal RoP220.2, Court of Appeal - Luxembourg (LU)

The Court of Appeal accepts that claimant add Spain in the concerned States as a consequence of BSH:

"23. Where Spain is concerned, even though it was not impossible, under the established case law following the CJEU decision in GAT v Luk (C-4/03) it could not have been expected from AIM to include this non-UPC territory in the original Statement of claim in the proceedings on the merits. It is fair to consider that AIM could not have done so with reasonable diligence at that stage. It is equally fair to consider that the anticipated change of this case law in view of the opinions of AG Emiliou, published after the original Statement of claim, was a relevant circumstance that justified adding the Spanish territory to the requested measures.

24. The possibility that also under the new case law of the CJEU adding the territory of Spain might lead to a decision to stay and possibly (but not necessarily – as the case could be continued with respect to the other territories involved) lead to a delay of the proceedings, must be balanced against the risk that AIM would start separate proceedings in relation to the Spanish territory and the ensuing potential risk of irreconcilable decisions. The Local Division has discretion to balance these risks and TGI has not convincingly substantiated that and why the Local Division could not reasonably have come to its decision."

In the wake of BSH

Lateness Indulgent Munich Local Division

- [14/04/2025 Syngenta Limited v. Sumi Agro](#),
UPC_CFI_566/2024_UPC_CFI_39/202, App_15498/2025, ORD_16126/2025,
Amend Document, Court of First Instance - Munich (DE) Local Division

The Local Division Munich accepts that claimant add Poland, the Czech Republic and the United Kingdom in the concerned States as a consequence of BSH:

"The amendment in question (adding to the territorial scope of the case Poland, the Czech Republic and the United Kingdom) could not have been made earlier with reasonable diligence (R 263.2.a RoP). As already held by the Court of Appeal, even if it was not impossible, Syngenta could not have been expected to include the non-UPC territories in the original statement of claim in the main proceedings according to the established case law following the ECJ decision in GAT v Luk (C-4/03) (UPC_CoA_169/2025 APL_9191/2025, nr. 23). The panel is of the opinion that Syngenta was not obliged to include the territories in question already in the original statement of claim on the basis of the opinions of AG Emiliou, as these opinions are not binding on the Court of Justice of the European Union and the legal uncertainty resulting from this is a good reason not to base procedural decisions on opinions of the AG."

In the wake of BSH

BSH-Adherent Milan Local Division

- [15/04/2025, ALPINESTARS RESEARCH S.p.A v. Dainese S.p.A.](#),
UPC_CFI_792/2024, App_55795/2024, ORD_58591/2024, Preliminary
objection, Court of First Instance - Milan (IT) Local Division

The Local Division Milan perfectly summarizes and applies BSH:

"In light of Court of Justice decision in case C-339/2022, 25 February 2025, UPC Milan Local Division has universal jurisdiction to adjudicate on infringement issues related to European patents over the defendants domiciled in Italy pursuant to Article 32 UPCA as well as pursuant to Articles 4(1) and 71a and 71b of the Regulation (EU) n. 1215/2012 (recast) as amended by Regulation (EU) 542/2014.

Different interpretation would have the effect of recognising that the UPC has less territorial jurisdiction than a national court, contrary to the provisions of Article 71a 7f the Regulation (EU) n. 1215/2012 (recast) as amended by Regulation (EU) 542/2014.

UPC Milan Local Division, in case it is the Court of the domicile of the defendant, has jurisdiction to adjudicate on infringement issues related to European patents validated in non-UPC Countries, in this case in Spain."

In the wake of BSH

Adherent, but Demanding, Paris Local Division

- [24/04/2025 Seoul Viosys Co., Ltd v. Laser Components SAS, Photon Wave Co.,Ltd](#), UPC_CFI_440/2023, ACT_588685/2023, ORD_598601/2023, Infringement Action, Court of First Instance - Paris (FR) Local Division

The Local Division Paris holds that, notwithstanding BSH, claimant still must “bring evidence of specific facts” concerning the existence of acts of infringement committed by the defendant in the territory of the State for which the remedies are sought:

“With regard to the UK, while a claim concerning acts of infringement committed on the territory of a non-EU State in which the patent at issue is in force may be deemed admissible before the UPC (CJEU, Case C-339/22, 25 February 2025, BSH Hausgeräte GmbH v Electrolux AB), the claimant still has to bring evidence of specific facts concerning the existence of such acts of infringement committed by the defendant, which is not the case here.”

In the wake of BSH

Liberal The Hague Local Division

- [23/05/2025 Moderna v. Genevant Sciences, Arbutus Biopharma](#),
UPC_CFI_191/2025_192/2025, App_19773/2025,, ORD_21852/2025,
Preliminary objection, Court of First Instance - The Hague (NL) Local Division

The Local Division The Hague takes a more liberal approach as to the burden of proof of the existence of acts of infringement committed by the defendant in the territory of the States for which the remedies are sought:

"The Defendants only dispute the international jurisdiction by arguing that Moderna Spain, Norway and Poland do not infringe the patents. The issue whether the patents are infringed, in which countries the infringement takes place and whether that infringement may (also) be attributed to those Defendants, however, falls within the scope of the examination of the substance of the action by the court having jurisdiction (Court of Appeal, Order of September 03, 2024, CoA_188/2024). For establishing international jurisdiction, Claimants have sufficiently substantiated that Moderna Spain, Moderna Poland and Moderna Norway allegedly infringe the patent in their home countries jointly with Moderna Netherlands, which is sufficient for jurisdiction of the UPC pursuant to Art. 8(1) BR (or Art. 7(1) Lugano). This ground for the objections, that was only raised for the three defendants mentioned, therefore fails."

Several defendants in The Hague LD

- [23/05/2025 Moderna v. Genevant Sciences, Arbutus Biopharma](#),
UPC_CFI_191/2025_192/2025, App_19773/2025, ORD_21852/2025,
Preliminary objection, Court of First Instance - The Hague (NL) Local Division

The Local Division The Hague takes also a liberal approach as to the "commercial relationship" required between the multiple defendants:

"To avoid multiple actions regarding the same infringement and the risk of irreconcilable decisions from such separate proceedings, and to comply with the main principle of efficiency within the UPC, the interpretation of "a commercial relationship" and therefore the link between the defendants should not be interpreted too narrowly. The fact of belonging to the same group (of legal entities) and having related commercial activities aimed at the same purpose (such as R&D, manufacturing, sale and distribution of the same products) is sufficient to be considered as "a commercial relationship" within the meaning of the Article 33(1)(b) (cf LD Munich 29 September 2023, UPC_CFI_15/2023, LD Paris 11 April 2024, UPC_CFI_495/2023). The JR notes that Moderna has also not disputed that all Defendants belong to the same group. That the action relates to the same alleged infringement has also been established above in the course of international jurisdiction for certain defendants. For other defendants this is not contested nor plausible. Therefore, also this ground for the objections fails."

In the wake of BSH

Adherent, but Demanding, Paris LD

- [23/05/2025 Hurom Co., Ltd v. NUC Electronics Europe GmbH, NUC Electronics Co., Ltd, Warmcook](#), UPC_CFI_163/2024, ACT_17434/2024, ORD_69293/2024 ,
Infringement Action, Court of First Instance - Paris (FR) Local Division

The Local Division Paris repeats that, notwithstanding BSH, claimant still must bring evidence of specific facts concerning the existence of acts of infringement committed by the defendant in the territory of the State for which the remedies are sought:

"134. HUROM's claim concerning alleged acts of infringement on Polish territory is admissible in light of the decision handed down by the CJEU in BSH v Electrolux, as has already been stated by several divisions of the UPC concerning non-contracting States of the UPC Agreement (concerning either EU States or third States, UPC_CFI_355/2023, LD Düsseldorf, 28 January 2025; UPC_CFI 702/2024, LD Paris, 21 March, 2025; UPC_CFI 792/2024, Milan LD, 15 April, 2025: all decisions on long arm jurisdiction). However, on the merits, the Claimant bears the burden of proof for the alleged facts in accordance with R. 13m and R. 171.1RoP. In the case at hand, no factual elements have been introduced into the proceedings concerning the alleged infringement facts relating specifically to the KUVINGS products referred to in this application. It is only alleged that the Kuvings and Warmcook's websites are accessible throughout Europe (SoC, section 3.3.1, pages 159-164), and the turnover achieved by Defendant 1 in Europe is given without any indication as to whether the latter actually relates to the allegedly infringing products (SoC, § 383).

135. Consequently, HUROM's claim for infringement based on the national part of the patent as granted for Poland cannot be considered as well-founded."

Prospects for the Unified Patent Court: infringement

- **The jurisdiction of the UPC is limited to European patents** by art. 3 of the UPC agreement (it is impossible before the UPC to rely on a national patent, whether from an EU Member State or a non-Member State).
- Full jurisdiction to rule **against defendants domiciled in the territory of the UPC** for any infringement of a European patent, including the territory of the signatory states of the Lugano Convention (including Switzerland and Norway) and the territory of EPO member states that are not members of the EU (including Turkey and the United Kingdom).

Prospects for the Unified Patent Court: validity

- **It is not possible to rule on the validity of a European patent in the case of non-contracting States that are members of the European Union and States that are signatories to the Lugano Convention (e.g. Switzerland and Norway), but it is possible to stay the infringement proceedings if the validity of the patent appears to be seriously questionable.**
- **With regard to defendants domiciled in the territory of the Unified Patent Court,** possibility of ruling by decision with effect only *inter partes* on the validity of the European patent for the territory of EPO member states that are not members of the EU (including Turkey and the United Kingdom).

Prospects for the UPC: questions

Does the Brussels I bis Regulation allow a defendant domiciled outside the EU (e.g. JP, US) to be accused before the UPC of infringing a European patent outside the EU (e.g. TR, UK)?

Article 6 provides:

"(1). If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State.

(2). As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that Member State of the rules of jurisdiction there in force, and in particular those of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1), in the same way as nationals of that Member State."...

Prospects for the UPC: questions

(continued 1) **Does the Brussels I bis Regulation allow a defendant domiciled outside the EU (e.g. JP, US) to be accused before the UPC of infringing a European patent outside the EU (e.g. TR, UK)?**

Article 71 b is difficult to interpret:

"The jurisdiction of a common court shall be determined as follows:

(1) a common court shall have jurisdiction where, under this Regulation, the courts of a Member State party to the instrument establishing the common court would have jurisdiction in a matter governed by that instrument;

(2) where the defendant is not domiciled in a Member State, and this Regulation does not otherwise confer jurisdiction over him, Chapter II shall apply as appropriate regardless of the defendant's domicile."

Prospects for the UPC: questions

(continued 2 and end) The case law of the UPC will have to determine whether the Brussels I bis Regulation allows a **defendant domiciled outside the EU** (e.g. JP, US) to be accused before it of infringing a European patent outside the EU (e.g. TR, UK).

The UPC will have to decide on the following constellations:

- The non-EU domiciled defendant is the sole defendant
or one of several defendants including some EU-domiciled
- The non-EU domiciled defendant is accused of infringement in UPC-CMS and in non-UPC-CMS
or only in non-UPC-CMS

More to come...

Uncharted and mysterious waters

New Article 71b (3) Regulation N° 542/2014

" 3. Where a common court has jurisdiction over a defendant under point 2 in a dispute relating to an infringement of a European patent giving rise to damage within the Union, that court may also exercise jurisdiction in relation to damage arising outside the Union from such an infringement.

Such jurisdiction may only be established if property belonging to the defendant is located in any Member State party to the instrument establishing the common court and the dispute has a sufficient connection with any such Member State."

New article 71b (3) Regulation Nº 542/2014

**Jurisdiction for infringement of a European patent
committed outside the territory of the Union
(EP non-UE)**

**Conditions of the statutory extension of jurisdiction
for “*damage arising outside the Union*”:**

- The defendant is being sued before the UPC
- He is accused of having committed acts of infringement of a European Patent in a UPC territory
- He is domiciled outside the European Union
- He owns property in any Member State party to the instrument establishing the common court, and
- The action has a sufficient connection with this State

2 June 2025

Report from the Commission on the application of the Brussels I bis Regulation

The EU Commission contemplates a revision of Article 24(4) of Brussels I bis Regulation

In addition, in its judgment in *BSH Hausgeräte* (C-339/22), the CJEU further clarified its *GAT* ruling stating that a court of the Member State of domicile of the defendant which is seised, pursuant to Article 4(1) of the Regulation, of an action alleging infringement of a patent granted in another Member State, still has jurisdiction to hear that action where, in the context of that action, that defendant challenges, as its defence, the validity of that patent, whereas the courts of that other Member State have exclusive jurisdiction to rule on that validity.

In conclusion, the rules establishing exclusive jurisdiction of the Regulation generally operate well. Nevertheless, a future review of the Regulation could reconsider the wording of Article 24(4) that aimed at codifying the *GAT* jurisprudence in the light of the recent developments in *BSH Hausgeräte*.

Proposal for the revision of the Brussels I bis Regulation

The proposal presented by Professor Edouard Treppoz at the *Cour de cassation* conference series (22 April 2024) would expressly allow the court hearing the infringement action to rule on the validity of the patent as an incidental question and in a decision with inter partes effect only, **even in the case of a European patent:**

"Article 24 (proposed wording; loose translation)

The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties, where the main object of the proceedings is a matter listed below:

(4) in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, ~~irrespective of whether the issue is raised by way of an action or as a defence,~~ the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of an instrument of the Union or an international convention deemed to have taken place."

Any other court may rule on the registration or validity of patents, trade marks, designs and other similar rights giving rise to a deposit or registration, where the question is raised by way of exception. However, the decision shall have no effect on third parties."

Pierre Véron

Thank you



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