



Local Chamber Munich

UPC_CFI_5/2023
Procedural order
of the Court of First Instance of the Unified Patent Court, issued
on: 27/09/2023

Date of receipt of application: Not available

Stephen George Edrich
(Defendant) - Otto-Hahn-Str. 20 - 85609 - Aschheim -
DE

Application served on 14/07/2023

Belkin GmbH
(Defendant) - Otto-Hahn-Str. 20 - 85609 - Aschheim -
DE

Application served on 14/07/2023

Belkin International, Inc
(Defendant) - 555 Aviation Boulevard, Suite 180 -
90245 - El Segundo - US

Belkin Limited
(Defendant) - Unit 1, Regent Park Booth Drive, Park
Farm Industrial Estate - NN8 6GR - Wellingborough,
Northamptonshire - GB

Marc Gary Cooper
(Defendant) - Unit 1, Regent Park Booth Drive, Park
Farm Industrial Estate - NN8 6GR - Wellingborough,
Northamptonshire - GB

Paul John McKenna
(Defendant) - Unit 1, Regent Park Booth Drive, Park
Farm Industrial Estate - NN8 6GR - Wellingborough,
Northamptonshire - GB

KLÄGER

- 1) **Philips IP Ventures B.V.** Represented by:
(Applicant) - High Tech Campus 52 - Tilman Mueller
5656 AE - Eindhoven - NL

COMPLOYEES(R)

- 1) **Stephen George Edrich** Application served on
(Defendant) - Otto-Hahn-Str. 20 - 85609 - 14/07/2023
Aschheim - DE
- 2) **Belkin GmbH** Application served on
(Defendant) - Otto-Hahn-Str. 20 - 85609 - 14/07/2023
Aschheim - DE
- 3) **Belkin International, Inc**
(Defendant) - 555 Aviation Boulevard,
Suite 180 - 90245 - El Segundo - US
- 4) **Belkin Limited**
(Defendant) - Unit 1, Regent Park Booth
Drive, Park Farm Industrial Estate - NN8
6GR - Wellingborough,
Northamptonshire - GB
- 5) **Marc Gary Cooper**
(Defendant) - Unit 1, Regent Park Booth
Drive, Park Farm Industrial Estate - NN8
6GR - Wellingborough,
Northamptonshire - GB
- 6) **Paul John McKenna**
(Defendant) - Unit 1, Regent Park Booth
Drive, Park Farm Industrial Estate - NN8
6GR - Wellingborough,
Northamptonshire - GB

Facts

The Applicant requests that the Tribunal order, pursuant to Rule 275(2) of the Rules of Procedure, that service attempts already made shall be deemed to be valid service (request made in the pleading of 15 August 2023, in CMS under ORD_559978/2023).

After completion of the *formal checks*, the Registry arranged for service of the statement of claim on the defendants as of 11 July 2023. According to the proof of service (postal delivery certificate), the claim was served on the first and second defendants on 14 July 2023; pursuant to Rule 271 no. 6 b) of the Rules of Procedure, the claim is thus deemed to have been served on the first and second defendants on 23 July 2023 (tenth day after posting, the posting having taken place no later than 13 July 2023). Proof of service for the court-ordered service on the third to sixth defendants is currently not available.

The plaintiff is of the opinion that service on the defendants 3) to 6) had already been effected before the attempt at postal service by the e-mail sent by the law firm to Ms Taylor; Ms Taylor is Chief Legal Officer, i.e. head of the legal department and part of the management at the defendant 3).

For the 4th defendant, service resulted from the fact that the 1st defendant, to whom service had already been effected, was one of the directors of the 4th defendant and thus one of its legal representatives. The same applies to the 5th and 6th defendants, who are also directors of the 4th defendant. It should be excluded that one of the directors of the 4th defendant does not inform them and the other directors of the action against the 4th to 6th defendants of which he is aware.

Furthermore, it must be assumed that the 4th and 2nd defendants, as subsidiaries of the 3rd defendant, informed the latter of the action.

The plaintiff's representative also contacted the representative of the 1st and 2nd defendants, Mr. Gampp from the law firm DLA Piper in Munich, and asked whether Mr. Gampp or DLA Piper would also be involved in the present case.

is authorised to receive service of process. Mr Gampp denied this. The fact that he had consulted Belkin showed that he had informed the Belkin Group and thus also the defendants 3) to 6) about the present proceedings. The plaintiff's representative had also attempted to bring the present action to the attention of the defendants 3) to 6) by having the statement of claim and English translations for each of the defendants 3) to 6) delivered in hard copy to Mr Gampp personally by the plaintiff's legal representatives at the offices of Mr Gampp's law firm at around 2.30 p.m. on 14 August 2023. However, Mr Gampp had refused to receive the printed copies packed in boxes for the defendants and to sign the acknowledgement of receipt. In view of the fact that the defendants to 3) to 6) were already aware of the application, the formal service in accordance with the Hague Convention was no longer relevant. The defendants 3) to 6) were thus already in a position to defend themselves against the action, as were the defendants 1) and 2). The defendants tried to delay the proceedings by all means.

The plaintiff finally had the action served on the defendants itself; service on the "Registered Agent" of the third defendant in the USA was effected on 21 August 2023, service on the fourth and fifth defendants was effected by personal delivery, also on 21 August 2023, and service on the sixth defendant was effected by post and delivered to the sixth defendant on 23 August 2023.

The applicant **applied on** 15 August 2023,

that, pursuant to R.275(2) of the Rules of Procedure, the Chamber orders that the steps already taken by the applicant, namely

- the information of the defendants 3) to 6) by e-mail by the Chamber, and/or
- the transmission of the application together with an English translation to the representative of the 1st and 2nd defendants; and/or
- the transmission of the statement of claim together with an English translation
 - o for service on the 3rd Defendant, on the 3rd Defendant's registered agent ("Registered Agent") by means of a service provider; and

- o to the defendants 4) to 6) by courier through solicitors based in the United Kingdom,

constitute a legally valid service.

Reasons

The application is only partially successful.

In the view of the Local Chamber, legally effective alternative service under the wording of Rule 275 No. 2 IR is not dependent on the fact that service under Rules 270 - 274 IR could not be effected. Alternative service under Rule 275 No. 2 IR is therefore possible even if an attempt at service under Rules 270 - 274 IR has not yet been completed.

1. The information sent by e-mail to Ms Taylor by the local chamber cannot be regarded as legally effective service, as Ms Taylor is not an authorised person to accept service according to the information provided by the applicant; there is no corresponding information under the heading "Person authorised to accept service". The local chamber did attempt to effect service via this channel; however, Ms Taylor did not respond.
2. However, the plaintiff correctly points out that with the 1st defendant one of the directors of the 4th defendant (see Annex 1c) and thus one of its legal representatives has already received the complaint also directed against the 4th defendant. In the view of the Local Chamber, this constitutes a legally valid service on the 4th defendant; it is therefore irrelevant in this context whether the 1st defendant actually passed on the information to the 4th defendant.
3. However, the circumstances described by the plaintiff in its application pursuant to Rule 275 no. 2 of the Rules of Procedure are only sufficient with regard to the service by courier or post arranged by the plaintiff itself to assume a legally valid alternative service on the defendants 3), 5) and 6).
 - a. The transmission of the statement of claim together with an English translation to the authorised representative of the 1st and 2nd defendants does not constitute a legally effective service on the 3rd, 5th and 6th defendants either, since the authorised representative of the 1st and 2nd defendants is not the legal representative of the 3rd, 5th and 6th defendants.

Defendants 1) and 2) had not yet been mandated by Defendants 3), 5) and 6); at least the Local Chamber has no definite knowledge of such a mandate.

- b. In the view of the Local Chamber, knowledge can be assumed under Rule 275 no. 2 of the Code of Criminal Procedure if there is either a legal relationship according to which knowledge can be imputed (see 2. above) or if there are concrete circumstances that justify the acquisition of knowledge.

However, the first defendant has no legal relationship to the fifth and sixth defendants that would permit such an imputation of knowledge. The Local Chamber agrees with the Applicant that the assumption that the 1st Defendant did not inform the 5th and 6th Defendants of the claim would be unrealistic. However, the Local Chamber has no definite knowledge that a corresponding forwarding was made by the 1st defendant. The Local Chamber is of the opinion that the transmission of the complaint from the 1st Respondent to the 5th and 6th Respondents may not be imputed under Rule 275 no. 2 of the Rules of Procedure, even if the assumption of such a transmission seems to be obvious.

The same applies to the third defendant: Here, too, the Local Chamber cannot identify any legal position of the first, second or fourth defendants in relation to the third defendant that would allow knowledge to be imputed. Again, from the point of view of the local chamber, it cannot be assumed that the statement of claim was passed on by defendants 1), 2) or 4) to defendant 3).

- c. The services ordered by the applicant to the registered agent of the third defendant by a service agent, to the fifth defendant by courier through solicitors established in the United Kingdom and to the sixth defendant by delivery by post were completed on the dates mentioned, so that an order under Rule 275(2) of the Regulation could be made in this respect; Rule 271(6)(b) of the Regulation does not apply in this context.
- d. It is neither submitted nor apparent that the above steps are incompatible with the law of the states in which service was effected (Rule 275 no. 4 of the Rules of Procedure).

The local division is aware that the defendants will now be served at different times. An extension or shortening of the time limit in order to establish a uniform time limit for reply for all defendants is currently out of the question due to the application requirement according to Rule 9 No. 3 of the Rules of Procedure. The local chamber reserves the right to separate the proceedings in view of the different deadlines for reply.

After all this, the rapporteur issues the following

Arrangement

1. It is ordered that service on the first defendant constitutes valid **service on the fourth defendant and** the application is deemed to have been served on the fourth defendant **on 23 July 2023**. The deadline for filing the statement of defence is 23 October 2023.
2. It is ordered that the transmission of the application together with the English translation to the registered agent of the third defendant by means of a service provider shall constitute valid **service on the third defendant in** accordance with Rule 275(2) of the Rules of Court and the application shall be deemed to have been served on the third defendant on 21 August 2023. The deadline for filing the defence is 21 November 2023.
3. It is ordered that the transmission of the application together with the English translation to the fifth defendant by courier through lawyers established in the United Kingdom shall constitute valid **service on the fifth defendant** and the application shall be deemed to have been served on the fifth defendant on 21 August 2023. The time limit for filing the defence is 21 November 2023.
4. It is ordered that the transmission of the application together with the English translation to the sixth defendant by post constitutes valid **service on the sixth defendant**; the application is deemed to have been served on the sixth defendant **on 23 August 2023**. The deadline for filing the defence is 23 November 2023.
5. Insofar as the plaintiff, by its application of 15 August 2023, requested that an order be made to the defendants 3) to 6) at an earlier date, the application is dismissed.

6. The order may be reviewed by the adjudicating body on a reasoned application by a party. The application for review must be filed within 15 days of the service of this order.

Tobias
Günther
Pichlmaier

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Tobias Günther
Pichlmaier
Date: 2023.09.27
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