



Hamburg - Local Division

UPC_CFI_54/2023 Procedural order of the Court of First Instance of the Unified Patent Court issued on 28 November 2023

Date of receipt of the complaint:

01/06/2023 DISPUTES

- 1) **Avago Technologies International Sales Pte. Limited**
(Party to the main proceedings - Plaintiff) - 1
Yishun Avenue 7 - 768923 - Singapore - SG
Represented by Florian Schmidt-Bogatzky

- 2) **Tesla Germany GmbH**
(Defendant) - Ludwig-Prandtl-Straße 27-29 -
12526 Berlin - DE
Represented by Dr Marcus Grosch

- 3) **Tesla Manufacturing Brandenburg SE**
(Defendant) - Tesla Str. 1 - 15537 Grünheide
(Mark) - DE
Represented by Dr Marcus Grosch

STREITPATENT

| Patent number | Owner |
|------------------|---|
| EP1612910 | Avago Technologies International Sales Pte. Limited |

APPLICANT

Avago Technologies International Sales Pte. Limited
(applicant) - 1 Yishun Avenue 7 - 768923 -
Singapore - SG
Represented by Florian Schmidt-Bogatzky

MOTIONS BY THE PARTIES:

The applicant requests the court to fix the time limit for the submission of the reply to the statement of defence and the time limit for the submission of the response to the counterclaim for annulment.

It claims to have received the defendant's statement of defence dated 2 October 2023 in the version originally marked as confidential only on 9 October 2023 and the version confirmed as confidential by the Local Chamber only on 8 November 2023. This version could then also have been transmitted to the group of recipients confirmed by the Local Chamber on the plaintiff's side.

It is true that it had already received the counterclaim for nullity on 5 October 2023. However, it considers it expedient to allow the related reply period to run concurrently with the reply period for the counterclaim, as knowledge of the content of the nullity counterclaim in particular is also of decisive importance for the preparation of the reply.

REASONS FOR THE ORDER:

The time limit for the plaintiff to respond is governed by R. 29 (a) of the Rules of Procedure and is two months after service of a statement of defence, provided that - as in the present case - a counterclaim for annulment has also been filed. It can be deduced from R. 9.3 (a) of the Rules of Procedure that a simple determination of the expiry of the time limit can also be pronounced by the court upon request. With regard to the right to a fair hearing and the interest of a proper defence against the plaintiff's response, in the case of applications for the protection of secrets, the time from which the party representatives can fully discuss the opposing party's pleading with their own party or the group of persons of their own party admitted by the court must be taken into account. As a rule, this is only possible once the confidentiality proceedings have been concluded in accordance with R. 262A VerfO. In the present case, it is significant that the application pursuant to R. 262A VerfO was only partially granted after hearing the plaintiff, with the result that an updated statement of defence and partially unredacted attachments had to be submitted. Only these documents could be discussed with the plaintiff itself or the named group. Prior to this, the statement of defence had only been made available to the party representative himself under a confidentiality order. The start of the deadline is therefore to be set on the date of the conclusion of the R. 262A proceedings, i.e. 8 November 2023 (cf. declaratory procedural order of this date). This does not constitute an extension of the deadline.

With regard to the time limit for replying to the action for annulment, this is also two months in accordance with R. 29 (a) of the Rules of Procedure. However, it appears expedient and, with regard to the effective exercise of the right to be heard, also necessary to synchronise this time limit with the time limit for replying. However, this would entail an extension of the time limit, which would make it necessary to hear the opposing party in accordance with the general principle in R. 264 of the Rules of Procedure.

ARRANGEMENT:

1. It is established that the plaintiff's time limit for responding to the defendant's statement of defence begins to run from 8 November 2023.
2. The defendants will be given the opportunity to comment on the plaintiff's request for an extension of the deadline with regard to the response to the action for annulment until 4 December 2023.


DETAILS OF THE ARRANGEMENT:

Action No.: ACT_463258/2023
UPC number: UPC_CFI_54/2023
Action type: InfringementAction
Application No.: 589355/2023
Application Type: Generic procedural Application

Issued in Hamburg on 28 November 2023

**Stefan
Schilling**

Legally qualified judge Dr Schilling
-Reporter -

 Digitally signed by Stefan
Schilling
Date: 2023.11.28 12:37:10
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