



UPC Court of Appeal
UPC_CoA_86/2024
App_17640/2024

Order
of the Court of Appeal of the Unified Patent Court
issued on 9 April 2024
to clarify the date of service

LEISATZ:

In proceedings before the Court of Appeal, Chapter 2 on service (Rules 270 to 279) of the Rules of Procedure applies accordingly. If R.271.1 of the Rules of Procedure applied in the proceedings before the Court of First Instance (in short: an electronic address was provided by the defendant or his representative) and/or a representative of the defendant accepted service on behalf of the defendant, further service - not only in the proceedings before the Court of First Instance, but also in the appeal proceedings - may be effected in accordance with R.271.2 of the Rules of Procedure within the closed electronic system of the EPG case management system (CMS).

KEYWORDS:

Service of the notice of appeal and statement of grounds of appeal

DEFENDANT / APPELLANT / PLAINTIFF IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE:

Panasonic Holdings Corporation,
hereinafter referred to as
'Panasonic'.

Represented by: Miriam Kiefer, Attorney at Law, Kather Augenstein

APPLICANTS / APPELLANTS / DEFENDANTS IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE:

Xiaomi Technology Germany GmbH

Xiaomi Technology France S.A.S.

Xiaomi Technology Italy S.R.L.

Xiaomi Technology Netherlands B.V.

Odiporo GmbH

Shamrock Mobile GmbH

hereinafter jointly referred to as 'Xiaomi'

Represented by: Dr Corin Gittinger, Attorney at Law, Freshfields Bruckhaus Deringer Rechtsanwälte,
Düsseldorf

LANGUAGE OF THE PROCEDURE

German

DECIDING JUDGE:

This order was issued by the rapporteur, Mrs Rian Kalden

CONTESTED ORDER OF THE COURT OF FIRST INSTANCE

- Date: 9 February 2024
- Order ORD_ 598181/2023 (in App_597406/2023, UPC_CFI_223/2023) of the Mannheim local division

PATENT

EP 3 611 989

FACTS OF THE CASE

Panasonic appealed against a procedural order of the Mannheim local division on the method of allocation of the statements of claim in the first instance proceedings to the parties (with the exception of Xiaomi) domiciled in China and Hong Kong.

APPLICATION

Xiaomi applied for:

1. to state or (informally) notify that the appeal was not served until 3 April 2024 and that the appeal response deadline therefore ends on 18 April 2024;

In the alternative

2. to (subsequently) extend the deadline for the response to the appeal until 12 April 2024; furthermore, in the alternative,
3. to subsequently extend the time limit for the response to the appeal to a reasonable extent, whereby Xiaomi leaves the question of the reasonable extent to the discretion of the court;

Xiaomi continues to apply in the alternative,

4. to grant the defendants restitutio in integrum against the failure to observe the time limit for filing a response to the appeal and to grant a reasonable period of time, in any case until 12 April 2024, to substantiate the corresponding application for restitutio in integrum pursuant to RoP 320 (3) and to take the necessary action pursuant to RoP 320 (4).

Xiaomi has applied for a preliminary ruling in the case,

5. Dismiss the appellant's appeal and uphold the contested order of the Mannheim local division dated 9 February 2024;
6. order the appellant to pay the costs of the appeal proceedings.

SUBJECT MATTER OF THE CASE

Date of service of the notice of appeal and statement of grounds of appeal REASONS

1. In proceedings before the Court of Appeal, Chapter 2 concerning service (Rules 270 to 279) of the Rules of Procedure apply accordingly. If R.271.1VerfO applied in the proceedings before the Court of First Instance (in short: a

address has been provided by the defendant or his representative) and/or a representative of the defendant has accepted service on behalf of the defendant, further service - not only in proceedings before the Court of First Instance but also in appeal proceedings - may be effected within the closed electronic system of the EPG case management system (CMS) in accordance with R.271.2 of the Rules of Procedure.

2. In the present proceedings, it transpired that the CMS was incorrectly configured not for service of the notice of appeal and notice of grounds of appeal in accordance with R.271.2 of the Rules of Procedure, but in the same way as in the case of service of a statement of claim in the proceedings at first instance, in which R.271.1 of the Rules of Procedure does not apply because the *plaintiff* has provided an electronic address for service. In such cases, an access code is sent to enable a representative of the defendant to access the proceedings in the CMS within 14 days of receipt of this notification and to voluntarily accept service on behalf of the defendant. If service is accepted voluntarily, the date of service shall be the date on which the representative gains access to the CMS using the access code.
3. The Xiaomi representative's dashboard showed a "Confirmation of service" task for the law firm, indicating that the service had not yet taken place. Xiaomi's representative was therefore unaware that a notification of service had already been sent. Nor could he have ascertained this by looking at the case file in the CMS, as a notification of service that takes place within the CMS is not saved in the document folder (or is otherwise recognisable or referred to elsewhere).
4. Assuming that service had been delayed due to a malfunction of the CMS, which had happened several times before, the representative contacted the law firm on 2 April 2024 to enquire when service would be effected. The law firm replied by email on 2 April 2024 that the allocation had already been made on 13 March 2024 and pointed out that the appeal was deemed to have been served on that date in accordance with R.271.6 of the Rules of Procedure. Only then was it discovered that the notification of service sent via the CMS had been moved unread to the representative's deleted emails folder.
5. When the Xiaomi representative, having discovered this, accessed the CMS on 3 April 2024 using the access code provided in the notifications, he was informed in the CMS interface that, in the event that the representative ticked the box "I voluntarily accept service of behalf of [named respondent] in Case no. 10370/2024" (which he did), "The date and time of service is when you lodge" (i.e. 3 April 2024). In addition, the CMS automatically generated service notices stating: "On 03/04/2024, service was made electronically (sic) via case management system to [name of defendant] regarding case no. 10370/2024."
6. In view of the confusion as to whether service has been effected, caused by the incorrect configuration of CMS for service in appeal proceedings, combined with the lack of recognisability in CMS that service has been effected, as well as the

contradictory reports on the date of service, the Court of Appeal clarifies and orders that the principles of due process and legal certainty in these circumstances require that the date on which the notice of appeal and statement of grounds of appeal were served on Xiaomi be deemed to be 3 April 2024. Consequently, this Statement of Defence must be filed on behalf of Xiaomi by 18 April 2024.

ORDER

The notice of appeal and statement of grounds of appeal must be deemed to have been served on Xiaomi on 3 April 2024. The response to the appeal on behalf of Xiaomi must have been filed on 18 April 2024.

Issued on 9 April 2024.

Date:

2024.04.0

Rian Kalden

9 09:15:14

+02'00'

Rian Kalden, rapporteur