



**Düsseldorf local division**  
**UPC\_CFI\_457/2023**

**procedural order**  
**of the Court of First Instance of the Unified Patent Court local division**  
**Düsseldorf**  
**issued on 14 May 2024**  
**concerning EP 3 490 258 B1**

KLÄGERIN:

**Dolby International AB**, represented by its EMEA Finance Director Susan Way, 77 Sir John Rogerson's Quay, Block C, Grand Canal Docklands, Dublin, D02 VK60, Ireland,

represented by: Attorney Dr Volkmar Henke, Attorney Dr Tilmann Müller, Bardehle Pagenberg Partnerschaft mbB, Bohnenstraße 4, 20457 Hamburg,

Patent attorney Dr Georg Arnetsberger, patent attorney Dr Johannes Möller, Bardehle Pagenberg Partnerschaft mbB, Prinzregenten- platz 7, 81675 Munich,

electronic Zustelladresse:henke@bardehle.de

DEFENDANT :

- 1. HP Deutschland GmbH**, represented by its managing directors, Mr Adrian Müller and Mr Peter Kleiner, Herrenberger Straße 140, 71034 Böblingen, Germany,
- 2. HP Inc.**, represented by its managing directors, 1501 Page Mill Road, Palo Alto, California 94304, U.S.A,
- 3. HP International SARL**, represented by its managing directors, Route du Nant-d'Avril 150, 1217 Meyrin, Switzerland,
- 4. HP Austria GmbH**, represented by its managing directors, Technologiestrasse 5, 1120 Vienna, Austria,
- 5. HP France SAS**, represented by its Managing Directors, Meudon Campus Bât. 1, 14 Rue de la Verrerie, 92190 Meudon, France,
- 6. HP Belgium SPRL**, represented by its Managing Directors, Hermeslaan 1a, B-1831 Diegem (H.P. Inc.), Belgium,
- 7. HP Inc Danmark ApS**, represented by its managing directors, Engholm Parkvej 8, 3433 Allerød, Denmark,

8. **HP Finland Oy**, represented by its managing directors, Piispankalliontie, 02200, Espoo, Finland,
9. **HP Italy S.r.l.**, represented by its Managing Directors, Via Carlo Donat Cattin, 5 - 20063 Cernusco sul Naviglio (MI),
10. **Hewlett-Packard Nederland BV**, represented by its managing directors, Startbaan 16, 1187 XR Amstelveen, The Netherlands,
11. **HP PPS Sverige AB**, represented by its managing directors, Gustav III:s Boulevard 30, 169 73 Solna, Sweden,
12. **HPCP - Computing and Printing Portugal, Unipessoal, Lda**, represented by its directors, Building D. Sancho I, Quinta da Fonte, Porto Salvo, 2770-071 Paço de Arcos, Lisbon, Oeiras, Portugal,
13. **Hewlett-Packard d.o.o.**, represented by its managing directors, Tivolska cesta 48, 1000 Ljubljana, Slovenia,
14. **Hewlett-Packard Luxembourg SCA**, represented by its Managing Directors, Vegacenter, 75 Parc d'Activités, Capellen, L-8308 Capellen, Luxembourg,
15. **HP Inc Bulgaria EOOD**, represented by its Managing Directors, Mladost Region, Business Park Sofia, Building 10, Sofia 1766, Bulgaria,

Defendants 1) to 15) represented by: Dr Frank-Erich Hufnagel, lawyer

Dr Nina Bayerl, lawyer Dr Stefan Dorn, lawyer Dr Sabrina Biedermann, lawyer Eva Acker, lawyer Vanessa Werlin, Freshfields Bruckhaus Deringer Rechtsanwälte Steuerberater PartG mbB, Feldmühleplatz 1, 40545 Düsseldorf,

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Zustelladresse:eva.acker@f

freshfields.com STREITPATENT:

European Patent No. EP 3 490 258 B1

ADJUDICATING BODY/CHAMBER:

Judges of the Düsseldorf local division:

This Order was issued by presiding judge Thomas as judge-rapporteur, legally qualified judge Dr Thom and legally qualified judge Brinkman.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: R. 263.1 and .3 Verfo - Application for authorisation to bring an action

BRIEF DESCRIPTION OF THE FACTS:

In a document dated 30 November 2023, the plaintiff filed an action against the defendants for an alleged infringement of the European bundle patent EP 3 490 258. The subject matter of the infringement is set out on p. 68 of the statement of claim, including the following:

"The defendants offer [...] in particular HEVC-capable computers (we refer to both desktop computers and laptops as "computers") and place them on the market in the Federal Republic of Germany and in other member states in which the patent in suit is validated [...]. In the present action, the plaintiff is challenging all computers and other electronic end devices that are capable of decoding and reproducing HEVC files ("challenged embodiments").

(emphasis added)

Since the defendant has denied the use of the patent in suit out of court, the plaintiff has ordered two of the laptops distributed by the defendants ("HP Spectre X360 14-ef2777ng" and "HP Pavillion Aero 13-be2754ng") and, on this basis, provided further details in the statement of claim on what it considers to be an infringement of the patent in suit. The plaintiff explained its approach to the examination of both laptops as follows:

"Since HP had claimed to Advance prior to the trial that the laptops were not capable of decoding HEVC files, at least in their delivery state, the plaintiff examined both laptops more closely and played a HEVC file with them:

- Firstly, the separate graphics card (GPU) was deactivated via the operating system's device manager. This meant that only the graphics card integrated into the processor (CPU) was active.
- A HEVC test file (a ten-second animated film) was then retrieved.

The HEVC file was played back by both laptops without any errors and without the need for any further steps, such as the installation of additional software. The processor(s) in the tested laptops are therefore able to decode and play HEVC files and make use of the HEVC standard".

On 11 April 2024, the defendants filed an application to intervene (App\_19914/2024). Accordingly, the NVIDIA Cooperation is to be requested on behalf of the defendants to inform the court within a period to be determined whether it wishes to intervene in the proceedings.

Against the background of this application, the plaintiff requested the admission of a limitation of the claims in a document dated 26 April 2024. It stated the grounds for this:

"The [...] specification of the applications serves to clarify that the present action does not assert any claims against the realisation of the claimed teaching of the patent in suit by graphics cards of the NVIDIA Cooperation and/or its affiliated companies".

The defendants argue that the "limitation of action" declared by the plaintiff also constitutes a partial withdrawal of the action. The plaintiff must bear the costs of this.

REASONS FOR THE ORDER:

The declaration made by the plaintiff is not a mere clarification, but a subsequent unconditional and thus always admissible limitation of the claim within the meaning of R. 263.3 VerfO.

Even if the tests carried out by the plaintiff were performed with a separate graphics card deactivated via the device manager of the operating system, the action was explicitly directed against all (HP) computers that are capable of decoding and reproducing HEVC files, as can be seen from the statements in the statement of claim (statement of claim, p. 68 above). The subject matter of the action was therefore not only computers in which the decoding and playback of HEVC files is at least also realised via the respective processor. Rather, the allegation of infringement also covered computers that are enabled to decode and play back such files by the graphics card alone. The limitation of the action has not fundamentally changed this. However, computers in which the means covered by the video decoding device are realised by a graphics card distributed by the NVIDIA Cooperation and/or companies affiliated with it are now excluded from the allegation of infringement. Such devices are no longer the subject matter of the action. In this respect, the action was permissibly limited by the plaintiff.

Whether the limitation of the action now declared also constitutes a partial withdrawal of the action leading to a partial obligation on the part of the defendant to bear costs within the meaning of R. 265 VerfO does not need to be conclusively decided at present. A legitimate interest of the defendant in a decision on the part of the action subject to limitation within the meaning of R. 265 sentence 2 VerfO is in any case neither stated nor apparent. In any case, the costs associated with a possible partial withdrawal of the action are only to be decided as part of the basic decision on costs in the main proceedings (R. 118.5 VerfO).

ORDER:

1. The following amendment to the application, which unconditionally restricts the application under A. I., as indicated below by underlining, is allowed:

A. The defendants are sentenced,

I. to refrain from doing so,

Decoding devices of a data signal representative of at least one image divided into portions that has been previously encoded,

in the Federal Republic of Germany, Belgium, Bulgaria, Denmark, Austria, Estonia, Finland, France, Italy, Lithuania, Luxembourg, Latvia, the Netherlands, Portugal, Sweden and Slovenia, to offer, place on the market, use or either import or possess for the aforementioned purposes,

wherein the video decoding device comprises the following:

Means to obtain (DE\_DO), by entropic decoding of data

of the signal, of digital information associated with residual data relating to at least one previously coded partition, the decoding device being characterised in that it includes a processing device (MTR\_DO) which is suitable:

- to determine from the residual data a subunit containing residual data which can be modified during a previous coding, the subunit being determined by a first coefficient not equal to zero and a last coefficient not equal to zero, the coefficients located before the first coefficient not equal to zero being equal to zero and the coefficients located after the last coefficient not equal to zero not being modifiable,
- to calculate the value of a function representative of the coefficients of the residual data of the particular subunit, the representative function being the parity of the sum of the coefficients of the residual data of the particular subunit,
- to obtain, in addition to the digital information obtained by entropic decoding, a non-zero sign of the first coefficient, the non-zero sign of the first coefficient being obtained starting from the parity of the sum of the coefficients of the residual data of the determined subunit, the non-zero sign of the first coefficient being obtained using a predetermined convention,

provided that none of the aforementioned means comprised in the video decoding device is realised by a graphics card distributed by NVIDIA Corporation and/or its affiliates.

2. The local division assumes that the application for leave to intervene filed by the defendants (App\_19914/2024) has become obsolete due to the limitation of the claim that has now been made.

ORDER DETAILS:

App\_23193/2024 concerning the main file reference ACT\_590145/2023

UPC number: UPC\_CFI\_457/2023

Type of proceedings: Action for infringement

Issued in Düsseldorf on 14 May 2024 NAMES  
AND SIGNATURES

Presiding judge Thomas

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