



UPC Agreement - Court of
Appeal UPC_CoA_297/2024
APL_32012/2024
App_55674/2024

ORDER
of the Court of Appeal of the Unified Patent Court issued on
21 October 2024
concerning an application for the submission of new evidence

APPELLANTS (AND DEFENDANTS IN THE MAIN PROCEEDINGS BEFORE THE CFI)

1. **SharkNinja Europe Limited**, Leeds, Great Britain
2. **SharkNinja Germany GmbH**, Frankfurt am Main, Germany

1 -2 represented by: Lawyer Wolrad Prinz zu Waldeck und Pyrmont, Advocate/Solicitor Dr Christopher Stothers, Lawyer Kilian Seidel and Lawyer Caroline Horstmann (Freshfields Bruckhaus Deringer)

APPELLANT (AND PLAINTIFF IN THE MAIN PROCEEDINGS BEFORE THE CFI)

Dyson Technology Limited, Malmesbury, Wiltshire, Great Britain

represented by: Attorney Dr Constanze Krenz, and attorneys David Kleß and Joshua Fiedler (DLA Piper, Munich, Germany)

PATENT IN SUIT

EP 2 043 492

LANGUAGE OF THE PROCEEDINGS

German

PANELS AND DECIDING JUDGES:

Second panel:

Rian Kalden, presiding judge and legally qualified judge

Ingeborg Simonsson, legally qualified judge and rapporteur

Patricia Rombach, legally qualified judge

Graham Ashley, technically qualified judge

Max Tilmann, technically qualified judge

CONTESTED ORDER OF THE COURT OF FIRST INSTANCE

- Date: 21 May 2024, Munich local division
- Action number of the Court of First Instance: UPC_CFI_443/2023; ACT_589207/2023

SUBJECT MATTER OF THE DISPUTE

Application for the admission of new evidence (R.222.2 RoP).

APPLICATIONS BY THE PARTIES

1. On 10 October 2024 (App_55674/2024), SharkNinja submitted to the Court of Appeal as new evidence two attachments to a document submitted by Dyson's counsel in proceedings in the USA (FBD 29). SharkNinja's legal representatives claim that they only became aware of the document and the enclosures on 21 September 2024, a Saturday, through an email from the legal representative in the US proceedings. Due to holiday and illness-related absences of the legal representatives, a large number of deadlines and several oral hearings in the period from 21 September 2024, an earlier review, consultation and submission in the present proceedings was not possible. SharkNinja is of the opinion that the content of the FBD 29 appendix is relevant to the appeal decision, as Dyson states there in particular on the interpretation of the feature "an elongate handle disposed between the airflow generator and the power source and dimensioned and arranged to be gripped by user's hand". However, if Dyson's interpretation in the US proceedings is also taken as a basis in the present proceedings, it is correct to conclude that its denial of the disclosure of the feature "power source" in the present proceedings must be regarded as contradictory and irrelevant and that, in the case of a number of prior art documents submitted by Dyson, the direct and unambiguous disclosure of this feature must be regarded as undisputed. The understanding of Dyson is therefore of considerable importance for the determination of the disputed disclosure content of the citations Annex FBD 8 (Gimelli), FBD 9, FBD 10, FBD 11, FBD 20 and FBD 24 (Pifco Vacette) and thus for the assessment of the legal status, in particular the novelty and inventive step of the patent in suit.
2. Dyson has made use of the opportunity granted by the court to comment on FBD 29. Dyson is of the opinion that the evidence should not be admitted because it is not relevant to the decision and, irrespective of this, it is obvious that the submission could have been made earlier and was instead culpably delayed. It may be true that the representatives in this case only became aware of the document now submitted and the attachments contained therein at a later date. However, this "internal delay" falls within SharkNinja's sphere of risk. Annex FBD 29 refers to a simply different patent in a context with a completely different legal framework.

REASONS

3. According to R.222 RoP, applications, facts and evidence not submitted by a party in the proceedings before the Court of First Instance may be disregarded by the Court of Appeal. In exercising its discretion, the court takes into account in particular (a) whether the party wishing to introduce new submissions can justify that they could not reasonably have been submitted in the proceedings before the Court of First Instance, (b) the relevance of the new submissions

for the decision on the appeal; and (c) the other party's position on the introduction of the new argument.

4. SharkNinja has not convincingly demonstrated why the submissions in the US proceedings are of such relevance to the decision in this case that admission in the appeal proceedings is appropriate given the stage already reached in the proceedings (date for oral proceedings is set for 31 October 2024). The interpretation of the patent is a question of law for the court. In doing so, it must assess the factual submissions of the parties in the proceedings, particularly with regard to the understanding of the skilled person. Contrary to SharkNinja's opinion, submissions by the parties in other proceedings that contradict the submissions in the present proceedings do not mean that the submissions in the present proceedings must be regarded as contradictory and irrelevant. Moreover, the submission relates to a different patent, albeit with identical claim wording.
5. For the reasons set out above, the Court of Appeal exercised its discretion to disregard FBD 29.

ORDER

The Court of Appeal disregarded the FBD 29 annex.

Issued on 21 October 2024

Date
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Rian Kalden

Rian Kalden, Chairman and legally qualified judge

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