



Local division Munich
UPC_CFI_550/2024

order
of the Court of First Instance of the Unified Patent Court issued on
21 November 2024

Guiding principles:

The Rules of Procedure of the UPC Agreement do not contain a principle according to which evidence for factual allegations arising from the action may no longer be submitted by the party bringing the action after the action has been filed.

UPC_CFI_550/2024

PLAINTIFF

Collomix GmbH, Daimlerstraße 9, 85080 Gaimersheim, Germany

represented by: Axel Oldekop

DEFENDANT

1. **Lidl Digital Deutschland GmbH & Co KG**, Stiftsbergstraße 1, 74172 Neckarsulm, Germany
2. **Lidl Dienstleistung GmbH & Co KG**, Bonfelder Straße 2, 74206 Bad Wimpfen, Germany

represented by: Karsten Königer

3. **Delta-Sport Handelskontor GmbH**, Wragekamp 6, 22397 Hamburg, Germany

represented by: Theo Schubert

UPC_CFI_550/2024

Facts of the case

On 24 September 2024, the plaintiff filed an action under action number UPC_CFI_550/2024.

In the application, water dosing devices are described under the model name "PARKSIDE® water dosing device" as attacked embodiments.

The date of service of the action on the defendants is noted in the CMS as 18 October 2024.

In a document dated 24 October 2024, the plaintiff **filed an application**,

the court a physical copy of the contested embodiment "PARKSIDE® water dosing device" incl. original packaging, operating instructions and a suitable screwdriver.

The judge-rapporteur gave the defendants the opportunity to comment on this application in writing.

The representative of defendants 1) and 2) made use of this option and stated in a document dated 20 November 2024 that the application should be rejected because, according to Rule 171.1 UPC RoP, the indication of the evidence and the application to submit the physical evidence should already have been submitted together with the statement of claim. The defendant had already contested the infringement prior to the proceedings.

The defendant under 3) has not issued a statement.

UPC_CFI_550/2024

Reasons

In response to the applicant's application, the submission of the physical copy of the contested design "PARKSIDE® water dosing device" including original packaging, operating instructions and a suitable screwdriver must be ordered.

Pursuant to Rule 172.2 UPC RoP, the court may **at any stage of the proceedings** order a party alleging a fact to produce evidence within its control.

The plaintiff claims that the "PARKSIDE® water dosing device" is offered and distributed by the defendants 1) and 2). It further claims that the patent in suit is infringed by the "PARKSIDE® water dosing device". The plaintiff requests that it be allowed to submit a corresponding device which is in its power of disposal.

Rule 172.2 UPC RoP merely links the court's power to order the production of evidence to the fact that a party alleges a fact and has evidence in its power of disposal in this regard.

The plaintiff claims that the "PARKSIDE® water dosing device" is offered and distributed by the defendants 1) and 2). The plaintiff has also stated that it is in possession of such a device. This means that the requirements of the rule 172.2 sentence 1 UPC RoP is fulfilled, so that an order for production can be issued. A pre-litigation denial of a factual allegation does not automatically mean that corresponding evidence can only be provided with the complaint and may no longer be submitted at a later date. To date, the defendants 1) and 2) have in any case not denied having offered the "PARKSIDE® water dosing device".

After all, there is no apparent reason why the court should not order the submission of the "PARKSIDE® water dosing device". It is true that the parties are required to present their arguments in full as early as possible in the proceedings (point 7 of the preamble to the UPC RoP Rules of Procedure). However, the Rules of Procedure do not contain a principle according to which evidence of factual assertions by the parties to the action may not be presented.

UPC_CFI_550/2024

The UPC RoP states that evidence may no longer be submitted after the action has been filed; otherwise there would be no basis for Rules 103.1(c), 104(e), 172.2 and 114 UPC RoP. In any case, a distinction must be made between the submission of evidence and the question of whether it can be taken into account in the decision.

The judge-rapporteur has the duty to make all necessary preparations so that an adjournment of the oral proceedings for the purpose of requesting further evidence (Rule 114 UPC RoP) is avoided. Rule 172.2 UPC RoP serves this purpose.


For the reasons set out above, the judge-rapporteur hereby gives the following opinion

order

The plaintiff must provide the court with a physical copy of the contested design "PARKSIDE® water dosing device" including the original packaging, operating instructions and a suitable screwdriver.

Munich, 21 November 2024

Tobias Günther
Pichlmaier

 Digitally signed by Tobias Günther
Pichlmaier
Date: 2024.11.21 12:08:55 +01'00'

Pichlmaier judge-
rapporteur