



Local division Munich
UPC_CFI_714/2024

Decision

**of the Court of First Instance of the Unified Patent Court
concerning the determination of costs at first instance
issued on 12 February 2025**

Plaintiff

biolitec Holding GmbH & Co. KG, Untere Viaduktgasse 6/9, 1030 Vienna, Austria
represented by: Paul Szynka

defendant

- 1. Light Guide Optics Germany GmbH**, Werner-von-Siemens- Str. 39, 53340 Meckenheim, Germany
- 2. S.I.A. LIGHTGUIDE International**, Celtniecības iela 8 - LV-5316 - Līvāni, Līvānu nov. - LV

represented by: Jörg Schmidt

PATENT AT ISSUE

EP 3 685 783

DECIDING JUDGE

TOBIAS PICHLMAIER, JUDGE-RAPPORTEUR

LANGUAGE OF THE PROCEEDINGS

GERMAN

UPC_CFI_714/2024

Facts of the case

The applicant failed with an application for interim measures before the Düsseldorf Local Division (LD Düsseldorf, Order of 5 September 2024, UPC_CFI_486/2024, ACT_47064/2024, ORD_47991/2024); these proceedings are currently pending before the Court of Appeal, the appeal is dated 19 September 2024 (UPC_CoA_540/2024, APL_52692/2024).

On 20 November 2024, the plaintiff filed an infringement action with the Munich local division. The subject matter of the infringement action is also the patent in suit; the accused embodiment and the defendants are also identical.

In their opposition, the defendants argue that the action is inadmissible under Art. 33 (2) UPCA. The local division in Düsseldorf, not the local division in Munich, has jurisdiction for the infringement action.

The service was also ineffective as there was no authorisation to receive pursuant to Rule 271(1)(c) RoP. The appointment as representative in proceedings for the adoption of interim measures does not constitute a general authorisation to receive documents. Rather, the authorisation to receive is limited to the proceedings for the adoption of interim measures.

The defendants have **claimed**,

dismiss the action with costs.

As a precautionary measure,

they have requested that it be held that the action was served on 2 December 2024.

The plaintiff **has claimed**,

I. reject the defendant's objection.

II. in the alternative: To refer the proceedings to the Düsseldorf local division.

UPC_CFI_714/2024

- III. Dismiss the application for a declaration that the action was served on 2 December 2024.

The applicant submits that at the time the action was brought, no action within the meaning of Article 33(2)(1) UPCA was pending before another chamber of the Court of First Instance.

Reference is made to the documents of the parties for further details of the facts and the dispute.

Reasons

I. Competence of the Munich local division

The Munich local division is competent for the infringement action at issue. The objection is therefore rejected.

Under Article 33(2) UPCA, no action within the meaning of Article 32(1)(a), (c), (f), (g) or (h) may be brought between the same parties in respect of the same patent before another division if an action within the meaning of Article 32(1)(a), (c), (f), (g) or (h) is pending before a division of the Court of First Instance.

The plaintiff filed an infringement action with the Munich local division on 20 November 2024. At that time, no action within the meaning of Article 32(1)(a), (c), (f), (g) or (h) was pending between the same parties on the same patent before another chamber. The application for interim measures of 14 August 2024 also concerned the patent in suit and the same parties as the infringement action filed with the Munich Regional Court on 20 November 2024. However, at the time the infringement action was filed, this application was already pending before the Court of Appeal.

UPC_CFI_714/2024

According to the UPCA and the Rules of Procedure, actions may be pending simultaneously - i.e. in parallel - before several divisions of the Court of *First Instance* (Rule 76.2 UPC RoP). However, with regard to the hierarchy of instances, a case is pending *either* before the Court of First Instance *or* the Court of Appeal, as Rule 346.1 UPC RoP shows. The case cannot therefore be pending at first instance and on appeal at the same time.

A case is therefore not "pending before a chamber of the Court of First Instance" if it is pending on appeal. It is pending in the court of appeal if the appeal has been lodged there.

The action for interim measures (UPC_CFI_486/2024, ACT_47064/2024) was already pending before the Court of Appeal on 19 September 2024. Consequently, on 20 November 2024, the date on which the present infringement action was filed, no action was pending between the same parties on the same patent before another chamber of the Court of First Instance.

The purpose of the provision in Art. 33(2) UPCA to ensure that two different local divisions do not deal with the same case at the same time. However, since the Düsseldorf local division did not deal with the action for interim measures since 19 September 2024, there was nothing to prevent the Munich local division from dealing with the infringement action filed on 20 November 2024.

II. Delivery date

It is established that the action was served on 2 December 2024. There was no authorisation to receive the present infringement action at the time it was filed electronically. However, the defendants are prepared to accept service against them on the date of actual access to the CMS on 2 December 2024.

UPC_CFI_714/2024

Decision

1. The objection is rejected.
2. It is established that the action was served on 2 December 2024.

INFORMATION ON THE APPOINTMENT

A decision by the judge-rapporteur to reject the objection may only be appealed in accordance with Rule 220.2.

Munich, 12 February 2025

Tobias Günther
Pichlmaier



Digitally signed by Tobias
Günther Pichlmaier
Date: 2025.02.12
14:40:04 +01'00'

Pichlmaier judge-
rapporteur