



Munich local division
UPC_CFI_112/2025

Order

**of the Court of First Instance of the Unified Patent Court local division Munich
issued on 19 February 2025**

HEADNOTES

1. Infringement of a patent holder's right is imminent within the meaning of Article 62(1) of the UPC Agreement if the infringement has not yet occurred but, based on specific circumstances, there are serious and tangible factual indications that the defendant will engage in unlawful conduct in the near future. The infringing act must be clearly foreseeable. It must only depend on the defendant's will whether the final step to commence the infringement is taken. This depends on the circumstances of the individual case.
2. In the case of an anti-suit injunction, the infringement of the patent holder's property right only occurs when the anti-suit injunction is issued by another court, but the infringing act consists of the infringer's application for the injunction.
3. Depending on the circumstances of the individual case, an infringement of the patent holder's property right by the issuance of an anti-suit injunction may already be imminent before the application for its issuance is filed.
4. The order to provide security in the case of a provisional measure issued without hearing the defendant may, pursuant to Rule 211.5 sentence 2 RoP if it is not possible for the applicant to provide the security in time for the order for the interim measure to be served at a trade fair and other means of service are associated with considerable difficulties.

APPLICANTS

1. **Nokia Technologies Oy**, represented by its President Patrik Hammarén, Karakaari 7, 02610 Espoo, Finland,
2. **Nokia Solutions and Network Oy**, represented by its President, Karakaari 7, 02610 Espoo, Finland,

represented by: Lawyer Tim Smentkowski, Arnold Ruess Rechtsanwälte PartmbB, Königsallee 59a, 40215 Düsseldorf.

RESPONDENTS

1. **Shanghai Sunmi Technology Co., Ltd.**,

in Mandarin Chinese: 上海商米科技集团股份有限公司

represented by Director LIN Zhe, Building 7, Room 505, No. 388, Songhu Road, Yangpu District, Shanghai, People's Republic of China,

Trade fair address from 18 to 20 February 2025:

EuroCIS trade fair in Düsseldorf, Düsseldorf Exhibition Centre, Hall 9, Stand B58

2. **Sunmi Technology (Yunnan) Ltd**, also trading as Sunmi Technology (Yunnan) Co., Ltd and Shang Mi Technology (Yunnan) Co., LTD.,

in Mandarin Chinese: 商米科技（云南）有限公司

represented by Director and Manager CHEN Guihong, Room 4510, 45th Floor, North Tower of Wanda Twin Towers, No. 688, Qianxing Road, Qianwei Sub-district Office, Xishan District, Kunming, Yunnan Province, People's Republic of China,

3. **Shangtian Technology (Shanghai) Ltd.**, also trading as Shangtian Technology (Shanghai) Co., Ltd.,

in Mandarin Chinese: 商田科技（上海）有限公司

represented by Executive Director CHEN Guihong, Room 1201-48, No. 127, Guotong Road, Yangpu District, Shanghai, People's Republic of China.

PATENT AT ISSUE

European Patents No. EP 2 243 229 and EP 3 799 333

JUDICIAL PANEL

Judicial Panel 2 of the Munich local division

PARTICIPATING JUDGES

This order was issued by Presiding Judge Ulrike Voß, legally qualified judge Dr Daniel Voß (judge-rapporteur) and legally qualified judge Dr Walter Schober.

LANGUAGE OF THE PROCEEDINGS

German

SUBJECT MATTER

Application for interim measures (Rule 206 of the RoP)

ORAL HEARING

18 February 2025 (pursuant to Rule 209.1(c) of the RoP)

FACTS PRESENTED BY THE APPLICANTS

- 1 The applicants are part of the Nokia Group. They are responsible for the management and licensing of Nokia's patent portfolio and are the owners of numerous technical property rights in the field of information and telecommunications technologies. Among other things, the first applicant is the registered owner of EP 2 243 229, and the second respondent is the registered owner of EP 3 799 333 (hereinafter: EP'229 and EP'333 or the patents at issue). The patents at issue are in force in various countries within the scope of the UPC Agreement. Among other things, EP'229 is considered by the first applicant to be essential for the LTE standard.

- 2 The first respondent is the parent company of the Sunmi Group, which is involved in, among other things, the development, manufacture and distribution of POS (point-of-sale) devices, including LTE-enabled POS devices. The second respondent is a wholly-owned subsidiary of the first respondent, established on 15 November 2024 and controlled by the first respondent, with its registered office in Kunming. Its

director, CHEN Guihong, is also the CTO and a member of the board of directors of the first respondent. The third respondent was founded on 27 November 2023 and is also a wholly owned subsidiary of the first respondent, with Mr CHEN Guihong as its director.

- 3 Since January 2021, the first applicant has been negotiating unsuccessfully with the first respondent, in its capacity as the parent company of the Sunmi Group, to conclude a licence agreement for its 2G, 3G, 4G and WiFi portfolio on FRAND terms. On 3 January 2025, the respondents filed a global licence rate determination procedure (hereinafter: rate-setting procedure) with the Kunming Intermediate People's Court in China. The defendants in this rate-setting procedure are the applicants. They were not informed by the respondents about the initiation of the rate-setting procedure.
- 4 Unaware of the pending rate-setting proceedings, the first applicant submitted further licence offers to the first respondent. [REDACTED] licence offers to the first respondent.
- 5 On 26 January 2025, the applicants first learned of the initiation of the rate-setting proceedings as a result of the court serving the application on a subsidiary based in China.
- 6 Subsequently, the applicants filed infringement actions based on EP'229 with the Munich local division and based on EP'333 with the Mannheim local division. The defendants in the action brought before the Munich local division are the first respondent and two other subsidiaries based in France and Poland.
- 7 The infringement actions were served on the first respondent on 18 February 2025 at the EuroCIS trade fair, which took place in Düsseldorf between 18 and 20 February 2025.

COURSE OF PROCEEDINGS

- 8 In their application dated 12 February 2025, the applicants requested the Munich local division to issue an anti-anti-suit injunction (hereinafter: AASI; for details, see the application and the explanations in the grounds for the order). In its order dated 17 February 2025, the court issued instructions to the applicants, to which the applicants responded in a document dated 17 February 2025. The court then scheduled an oral hearing in accordance with Rule 209.1 (c) RoP for 18 February 2025 and heard the applicants' oral arguments.

APPLICATIONS

9 The applicants request

– due to the particular urgency and, in particular, due to the imminent threat of countermeasures by the respondents before the Kunming Intermediate People's Court in China or another court dealing with the rate-setting proceedings, which could pre-empt the court here and thus frustrate the present application, without oral proceedings and without prior hearing of the respondents (R. 206.3 RoP)

the issuance of the following interim measure I.

The respondents are prohibited by way of interim measure under threat of a penalty payment for each violation,

initiating and/or pursuing proceedings for the issuance of an anti-suit injunction before the Kunming Intermediate People's Court in China, other courts in China and/or other courts worldwide, or applying for other equivalent judicial or administrative measures that directly or indirectly prevent and/or are intended to prevent the applicants from pursuing or continue patent infringement proceedings based on their standard-essential European patents subject to the jurisdiction of the UPC before the competent chambers of the UPC within the scope of the EPC, and/or to enforce any resulting judgments or measures,

in particular also if and to the extent that the applicants are or are to be directly or indirectly prevented from

- to continue or extend further claims in the patent infringement actions filed on 10 February 2024 with the Munich local division in respect of patent EP 2 243 229 and at the local division in Mannheim for patent EP 3 799 333, or to extend further claims or to bring and pursue further patent infringement actions against the respondents here or affiliated group companies or other companies of the Sunmi Group before the Unified Patent Court ("anti-suit injunction");
- Injunction judgments of the Unified Patent Court against the respondents or defendants in the patent infringement actions before the Munich local division concerning patent EP 2 243 229 and before the

Local division in Mannheim regarding patent EP 3 799 333 dated 10 February 2024 (namely the first respondent) as well as Sunmi France SAS and Sunmi Poland Sp z.o.o.) or affiliated group companies or other companies of the Sunmi Group, shall be enforced ("anti-enforcement injunction"),

whereby this injunction also includes, in particular,

- the requirement to withdraw any applications for an anti-suit injunction before the Kunming Intermediate People's Court or any other court in China and/or worldwide within 24 hours of service of this order, or to take other procedural measures to finally revoke such an anti-suit injunction with effect for the scope of the UPC Agreement,
- an immediate prohibition on continuing any anti-suit injunction proceedings with effect for the scope of the UPC Agreement, except for the purpose of withdrawing the application,
- the prohibition on directly or indirectly prohibiting the applicants, by means of a court or administrative order aimed at prohibiting the present proceedings, from conducting patent infringement proceedings based on their standard-essential European patents subject to the jurisdiction of the UPC before the competent chambers of the UPC within the scope of application of the UPC Agreement and/or from enforcing any resulting judgments,

whereby the above requirements and prohibitions also include exerting appropriate influence on affiliated companies by making full use of the possibilities offered by group law.

II.

In the event of any violation of the order under Section I, the respondents shall pay the court a (repeated, if necessary) penalty of up to €250,000.00 for each day of the violation.

III.

The order is immediately enforceable without security.

Alternatively:

The order is initially enforceable without security. However, the enforceability of this order shall end if the applicants do not provide security in favour of the respondents within 20 days in the form of

a deposit or bank guarantee, the amount of which we leave to the discretion of the court.

IV.

Pursuant to Rule 13.1 (q) RoP, an order is made that English-language documents, in particular the annexes submitted with the application, do not need to be translated.

LEGAL OPINIONS OF THE APPLICANTS

- 10 The applicants consider the Munich local division to have international, subject-matter and local jurisdiction. This is because the place of success of the threatened infringement of their patent rights here in the form of an anti-suit injunction (hereinafter: ASI) lies within the jurisdiction of the UPC, and through the proceedings before the Munich and Mannheim local divisions also in the Federal Republic of Germany. An infringement of a patent holder's property rights by prohibiting the enforcement of their patent rights could also be considered a patent infringement.
- 11 The applicants consider their application to be well-founded. It is highly probable that they are entitled to initiate proceedings and that their rights under their patents have been infringed. As owners of property rights, they are entitled to bring the action. This is because an ASI typically interferes with the patent holder's right to justice under Article 47(1) of the EU Charter and with the property rights protected by national legal systems in the form of patents, as it includes a comprehensive prohibition on bringing legal proceedings. The patent holder is no longer able to assert its property rights before the competent courts – in this case the UPC Agreement.
- 12 In addition, there is a risk of first-time infringement. The respondents have filed a main action in the People's Republic of China, a jurisdiction that generally provides ASIs, for a declaration of a global licence fee. They had shown that they did not shy away from unilaterally imposing on them – the applicants – a forum that was allegedly called upon to make an appeal worldwide. There was a concrete fear that the respondents would also want to prohibit the applicants from enforcing their patent rights in other jurisdictions outside China – including Germany and before the UPC Agreement. This was a "classic" litigation strategy, accompanying rate-setting lawsuits with applications for ASIs and anti-anti-anti-suit injunctions (hereinafter: AAASI). There is a tangible risk that the respondents will, just as secretly as the rate-setting proceedings, also file an application for an ASI or even an AAASI with the Chinese court in order to prevent any "interference" with the Chinese rate-setting proceedings. This is particularly true following the service of the infringement actions on the first respondent at the EuroCIS trade fair.

On 18 February 2025, they had reason to apply for an ASI. Conversely, they – the applicants – could not wait any longer because ASI and AAASI could be applied for and then issued without their knowledge. In that case, the infringement would already have occurred and the property right would have been devalued.

- 13 The assumption of a risk of first-time infringement at the present time must also be accepted prior to an application for the issuance of an ASI because, otherwise, the property rights would have been infringed and the applicants would effectively be without legal protection. Although it is conceivable to respond to an ASI by means of an AAASI, this is hardly reasonable due to the difficulties of service in the People's Republic of China. An ASI issued by Chinese courts at short notice could be enforced for many months before an AAASI from the UPC Agreement could be served on the respondents. During this time, high penalties of around EUR 135,000.00 per day could be incurred. However, due to the EuroCIS trade fair from 18 to 20 February 2025, it would still be possible to serve an AAASI at the trade fair.
- 14 The applicants are of the opinion that, ultimately, the weighing of interests also favours them. The urgency of the matter should be determined based on the date on which they became aware of the rate-setting procedure. On this basis, they did not act hesitantly. The issuance of interim measures is also objectively urgent because the applicants cannot be referred to proceedings on the merits. An ASI can be issued at very short notice after the application is filed, without the applicants necessarily being notified of the application. Furthermore, an ASI is generally enforceable immediately and, as a result of the sanctions they face for non-compliance with the ASI, the applicants may be forced to withdraw the infringement actions pending before the Munich and Mannheim local divisions. In addition, an ASI is regularly associated with a permanent prohibition on further actions based on the standard-essential patents. The applicants would also face considerable damage if they failed to comply with any ASI. In the event of a violation of an ASI, the applicants could face significant sanctions. In contrast, the respondents would not be significantly affected by the AAASI sought here. They could continue the rate-setting procedure unhindered. The ASI sought by the respondents, on the other hand, would in any case constitute a prohibited interference with the applicants' property rights.
- 15 The ordering of interim orders without prior hearing of the respondents is necessary because otherwise the purpose of the requested order could be thwarted by an ASI applied for by the respondents at short notice before a Chinese court and then issued – also ex parte.
- 16 Since the sought-after injunction does not entail any particular damage on the part of the respondents and since it is not possible for the applicants to provide security at short notice

without running the risk of an ASI being issued after the infringement proceedings have been served, the interim measure should be ordered without security.

REASONS FOR THE ORDER

- 17 The admissible application for interim measures is well founded.
 - I.
- 18 The application for interim measures is admissible.
 - 1.
- 19 The international jurisdiction of the UPC Agreement follows from Art. 31 UPC Agreement in conjunction with Art. 71b No. 2 Brussels Ia Regulation. The place of performance of the alleged imminent tortious act lies within the jurisdiction of the UPC Agreement.
 - 2.
- 20 The UPC's jurisdiction to issue provisional measures (AASI and AAEI) is derived from Article 32(1) of the UPC Agreement.
- 21 According to Article 32(1)(c) of the UPC Agreement, the Court has exclusive jurisdiction to hear actions for interim measures, protective measures and provisional measures. This jurisdiction applies in any case to actions which, pursuant to Article 32(1)(a) of the UPC Agreement, fall within the exclusive jurisdiction of the UPC. These include actions for actual or threatened infringement of patents.
- 22 An infringement of a patent is not only considered to be the unlawful use of a patent, but also an infringement of the patent holder's property rights by prohibiting the enforcement of their patent rights (Munich local division, order of 9 December 2024, CFI_755/2024 – Avago/Realtek; see also: Grabinski/W. Tilmann, in Tilmann/Plasmann, Einheitspatent, Unified Patent Court [Unitary Patent, Unified Patent Court], 2nd ed., Art. 32 para. 61a).
- 23 Such a violation of the applicants' property rights is at issue in the present case. The applicants have argued that there is reason to fear that the respondents will apply for an ASI in the near future, if they have not already done so, or that an ASI has already been issued, aimed at preventing proceedings based on the patents at issue or other patents of the applicants from being brought before the UPC Agreement (the German local divisions) based on the patents at issue or other patents of the applicants, or to enforce corresponding judgments of these divisions. Such prohibitions on litigation and enforcement interfere with the applicants' property rights in relation to the patents at issue and their other standard-essential portfolio.

3.

24 The jurisdiction of the Munich local division is based on Art. 33(1)(a) of the UPC Agreement. The infringement of the applicants' property rights threatens to occur within the jurisdiction of the local division here. According to the applicants' submission, it is to be expected that they will be prohibited, among other things, from asserting standard-essential patents from their portfolio before the UPC Agreement and thus before the Munich local division, in particular from continuing the proceedings UPC_CFI_107/2025 / ACT_6873/2025 based on EP'229 or from enforcing decisions issued therein. However, the Munich Local Division also has jurisdiction over the proceedings before the Mannheim Local Division based on EP'333, because Article 33(1)(a) of the UPC Agreement only requires an actual or threatened infringement in the contracting member state to establish the local jurisdiction of any of the local divisions located in that state.

II.

25 The application for interim measures is admissible pursuant to Art. 62 (1), (2) of the UPC Agreement in conjunction with Rule 211 (1), (2), (3) RoP. It is highly probable that the applicants are entitled to initiate these proceedings and that there is a threat of infringement of their rights under the patents at issue and other standard-essential patents. The weighing of interests to be carried out in the context of the discretionary decision is in favour of the applicants.

1.

26 The applicants are to be regarded as entitled under Rule 8(5) RoP. They are entered in the register as the owners of the patents at issue.

2.

27 It is highly probable that the applicants' rights relating to the patent at issue and their other standard-essential patents are at risk of infringement within the meaning of Article 62(1) of the UPC Agreement. The applicants have substantiated the imminent infringement of their property rights in relation to the patent at issue and other patents.

a)

28 According to Art. 47(1) of the EU Charter, everyone whose rights or freedoms guaranteed by Union law have been violated has the right to an effective remedy before a court. Article 47(2) of the EU Charter gives everyone the right to have their case heard by an independent, impartial and previously established court in a fair hearing, in public and within a reasonable time. Art.

47 The EU Charter accordingly guarantees a general right to justice at European level, i.e. access to courts. According to Article 17(2) of the EU Charter, intellectual property is in any case a property-like right which must be protected under the Charter. Consequently, Article 47(1) and (2) of the EU Charter also protect a person's access to the UPC Agreement for the purpose of asserting an (alleged)

unlawful use of a patent (Local Division Munich, Order of 9 December 2024, CFI_755/2024 – Avago/Realtek).

b)

29 Under German law, which applies at least to the German part of the patents at issue pursuant to Article 24(1)(e) of the UPC Agreement, Articles 2(1) and 19(4) of the Basic Law grant a general right to justice. Sections 823(1) and 1004 (analogous) of the German Civil Code (BGB) provide a substantive legal basis for the protection of property, which can only be enforced by means of the constitutionally protected principle of the rule of law described above. On the basis of Art. 47 (1) and (2) of the EU Charter, there is already no reason to assume that the legal systems applicable to the other parts of the European patent take a different view and approve ASI. The applicants have cited corresponding provisions for the protection of property in Art. 2043 Codice Civile (IT), Article 1240 of the Code Civil (FR), Article 6:162 of the Burgerlijk Wetboek (NL), Chapter 2 § 2 of the Vahingonkorvauslaki (FI) and Chapter 2 § 1 of the Skadeståndslag (SE) (1972:207).

c)

30 The Munich local division (Panel 2) considers it highly probable that the respondents will file an application for an ASI before the Kunming Intermediate People's Court in China or before another Chinese court, which, if granted, and in the case of an Anti-Enforcement Injunction (AEI), would constitute a comprehensive prohibition on litigation and a comprehensive prohibition on the enforcement of decisions of the UPC Agreement. Such prohibitions violate the previously discussed rights to justice; they constitute unauthorised interference with the applicant's property-like rights (Munich local division, order of 9 December 2024, CFI_755/2024 – Avago/Realtek).

aa)

31 An infringement of a patent holder's rights within the meaning of Article 62(1) of the UPC Agreement is imminent if the infringement has not yet occurred but there are serious and tangible factual indications, based on specific circumstances, that the defendant will engage in unlawful conduct in the near future. The infringing act must be clearly foreseeable. It must only depend on the defendant's will whether the final step to commence the infringement is taken (see Local Division Düsseldorf, order of 6 September 2024, CFI_165/2024 – Novartis v Celltrion). This depends on the circumstances of the individual case.

bb)

32 In accordance with these principles, the Munich local division (Panel 2), taking into account all the circumstances of the individual case and assessing the overall conduct of the parties involved, is of the opinion that it is highly probable that the respondents will apply to the Kunming Intermediate People's Court in China or another Chinese court for an ASI – possibly in

connection with an anti-enforcement injunction (AEI) – if such an injunction has not already been applied for or even issued.

(1)

33 The Munich local division (Panel 2) considers the imminent infringement to be a highly probable, imminent application for an ASI to be issued by the respondents. Even if the infringement of the applicants' property rights only occurs when the court seised issues an ASI, the application filed by the respondents already constitutes the infringing act. This is because the infringing act is based on the conduct of the respondents. By filing the application, they relinquish control of the situation and cause the court seised to issue a corresponding ASI. From the respondents' point of view, the last step they need to take to infringe the patents at issue is to file an application with a Chinese court. It is highly probable that this court will then issue an ASI. This is for the same reasons that suggest that an application by the respondents for the issuance of an ASI is imminent (see below for more details). From the respondents' point of view, the application for an ASI means that everything has been done to ensure that the applicants' property rights will be infringed in the foreseeable future through the issuance of an ASI. From the applicants' point of view, there is also the fact that an ASI can be issued by a Chinese court without the applicants being notified in advance of any application by the respondents, so that it is not possible in such cases to wait until an application is actually filed.

(2)

34 There are more reasons for than against the respondents now also filing an application for an ASI with the Kunming Intermediate People's Court in China or before another Chinese court in the near future.

35 The respondents have already initiated global rate-setting proceedings before the Kunming Intermediate People's Court. However, the initiation of such proceedings does not in itself constitute grounds for assuming that the respondents will now also file an application for an ASI with this court. In principle, a party is free to make use of the legal remedies available to it in its home country in a permissible manner without this giving rise to the accusation that the party seeking legal redress is thereby already infringing the property rights of the patent holder.

(3)

36 However, it should be noted that the first respondent was served with the infringement actions based on EP'229 and EP'333 on 18 February 2025 at the EuroCIS trade fair. As a result, there are competing proceedings between the parties. While the rate-setting proceedings aim to establish a global licence for the use

the patents at issue and other patents from the applicants' portfolio, the infringement actions are aimed at preventing the use of the patents at issue in the member states of the UPC Agreement in which the patents at issue are in force, unless the first respondent concludes a corresponding FRAND licence agreement for the Sunmi Group. The respondents will therefore have a strong interest in bringing the rate-setting proceedings they have initiated, which usually take longer than infringement proceedings before the UPC, to a successful conclusion without disruption and in not being forced, as a result of a decision in infringement proceedings before the UPC, to withdraw their products from the European market or to conclude a licence agreement with the applicants in order to avoid these consequences. However, the respondents can only complete the rate-setting procedure and prevent a prior decision by the UPC in the infringement proceedings based on the patents at issue if they apply for a corresponding ASI, as is obvious.

(4)

37 Furthermore, the respondents will be compelled to file an ASI against the applicants in relation to the infringement proceedings pending before the UPC Agreement, because the Munich I Regional Court, at the request of the applicants, issued an AASI based on further patents asserted in infringement proceedings before the Munich I Regional Court and the Mannheim Regional Court, which was also delivered to the first respondent on 18 February 2025, also at the EuroCIS trade fair. This will further increase the defendants' incentive to protect the rate-setting procedure, at least against infringement proceedings before the UPC, by means of an ASI. This is because protection has already failed with regard to the infringement proceedings before the courts of the Federal Republic of Germany due to the AASI that has been issued. In addition, according to the applicants' submission, the Sunmi Group does not have its core market in the Federal Republic of Germany, which makes protection against an injunction effective under the UPC Agreement all the more important for the respondents.

(5)

38 Another argument in favour of an imminent application for an ASI is that the first respondent, with its newly established subsidiaries, initiated the rate-setting procedure during the ongoing licence agreement negotiations with the first applicant and did not even inform the first applicant of the initiation of this procedure. Instead, it allowed the first respondent to believe that the licence agreement negotiations were continuing and accepted licence offers even though the rate-setting procedure had already begun. Such behaviour is not typically expected from a negotiating partner willing to grant a licence and, in any case, cannot be considered constructive. This is a unilateral measure by the respondents, which puts them in an advantageous position because it completely takes the applicants out of the licensing negotiations and thus also out of the negotiation of a licence, without the applicants

being able to defend themselves against it in any way or at least find an alternative solution.

(6)

39 On this basis, and in view of the competing proceedings before the Kunming Intermediate People's Court on the one hand and the Munich and Mannheim local divisions on the other, it is not to be expected that the respondents will readily relinquish the advantages gained by initiating the rate-setting proceedings in favour of the infringement proceedings pending before the UPC Agreement. It should also be noted that, according to the applicants' submission, the People's Republic of China is a jurisdiction that generally grants ASIs. It is a "classic" litigation strategy to secure rate-setting proceedings before a Chinese court with applications for ASIs or anti-anti-suit injunctions (hereinafter AASI). Lawyers in the People's Republic of China who handle rate-setting proceedings are familiar with this litigation strategy and know that ASIs and AASIs can be requested to secure these proceedings.

40 In fact, it must be assumed that, at the latest upon service of the infringement action on the first respondent, the respondents' legal advisors will inform them of the possibility of an ASI and – assuming that the respondents act in accordance with their advice – will also apply for one. In any case, there is no apparent reason to assume why the respondents should accept the applicants' infringement actions and not apply for an ASI.

(7)

41 The respondents cannot be accused of having created the situation of an imminent patent infringement themselves by bringing infringement actions against the first applicant and other subsidiaries. Rather, it is the first respondent who, to the surprise of the applicants, initiated the rate-setting procedure during ongoing licence agreement negotiations, thereby prompting the respondents to exercise their legal remedies in the form of infringement actions.

3.

42 The weighing of the interests of the parties, which must be carried out in accordance with Art. 62 (2) of the UPC Agreement and Rule 211 (3) of the RoP, and which must take into account all the circumstances of the individual case, is in favour of the applicants in the present case. The issuance of the interim order is urgent both in terms of time and objectively. The applicants cannot be expected to wait until the conclusion of the main proceedings to enforce their claims (cf. on the requirement of objective urgency or factual necessity: local division Düsseldorf, Order of 31 October 2024,

UPC_CFI_347/2024 – Valeo Electrification/Magna PT et al.; Munich local division, order dated 25 November 2024, UPC_CFI_443/2024 – Häfele/Kunststoff KG Nehl).

a)

43 The order for the requested interim measures is urgent in terms of time, R. 209.2 (b) RoP.

44 The urgency required for the order of interim measures is lacking if the injured party has been so negligent and hesitant in pursuing their claims that, from an objective point of view, it must be concluded that the injured party is not interested in the swift enforcement of their rights, which is why it does not seem appropriate to allow them to seek interim legal protection (see also Munich local division, UPC_CFI_443/2024, decision of 25 November 2024 – Häfele/Kunststoff KG Nehl; Local division Düsseldorf, UPC_CFI_347/2024 – Valeo Electrification/Magna PT et al.). There is no evidence of negligent or hesitant behaviour in the present case.

45 The period of waiting within the meaning of Rule 211.4 of the RoP is to be measured from the date on which an applicant has or should have had knowledge of the infringement that enables him to file an application for provisional measures under Rule 206.2 of the RoP (Court of Appeal, order of 25 September 2024, UPC_CFI_182/2024 – Ortovox Sportartikel/Mammut Sports Group et al.). It can be left open whether the date of first knowledge of the rate-setting proceedings initiated by the respondents in China, i.e. 26 January 2025, or a later date should be taken as the basis for this. Even if 26 January 2025 were to be considered the decisive date, an application for interim measures received by the court on 12 February 2025, i.e. less than three weeks later, cannot be regarded as hesitant or negligent. In any case, a date earlier than 26 January 2025, because the parties were still in licence agreement negotiations and there was no reason to assume that the issuance of an ASI was imminent.

b)

46 The granting of the interim measure is also objectively urgent. It is objectively necessary and required. The applicants cannot be referred to proceedings on the merits.

47 If the respondents were to apply for an ASI at the Kunming Intermediate People's Court or another Chinese court and an ASI were subsequently issued, it would be immediately enforceable in China. The applicants could be forced – as a result of the sanctions they would face for non-compliance with an ASI issued by Chinese courts – to withdraw the action pending before the Munich local division, UPC_CFI_107/2025 / ACT_6873/2025, or at least not to pursue it further.

The same applies to the infringement action based on EP'333 before the local division in Mannheim. The applicants' right to a fair trial, according to which they have the right to have the competent court clarify whether they are entitled to injunctive relief, damages or other claims arising from the patents at issue, would be undermined. Even if the applicants were still able to continue the proceedings and only the enforcement of a possible injunction were prohibited, they would ultimately be effectively prevented from enforcing their rights. The unlawful use of the patents at issue established by the competent court and the associated legal consequences would be rendered meaningless. Ultimately, the right to justice would not be guaranteed. The applicants' property-like positions would be devalued.

- 48 This is all the more true when one considers that, according to the applicants' submission, an ASI typically involves a permanent prohibition on actions based on all standard-essential patents of the patent holder concerned or is aimed at prohibiting the enforcement of decisions based on such actions. If the applicants were to comply (or be required to comply) with such ASI and/or AEI, this interference with their property-like rights would lead to a (material and financial) devaluation of the patent at issue and all other standard-essential patents, which would threaten the applicants with considerable damage.
- 49 The applicants would also suffer considerable damage if they failed to comply with the ASI and/or AEI if ordered. The applicants have argued that a violation of an ASI ordered by the Chinese courts is subject to considerable sanctions. These may include fines of around EUR 135,000.00 per day.
- 50 The applicants cannot be referred to proceedings on the merits before the UPC because Chinese courts can issue an ASI at short notice within a matter of days without the patent holders concerned – in this case the applicants – being aware of a prior application for such an ASI. There is therefore a high risk that, even before a decision is made on the main action, the respondents will in any case use such an action as an opportunity to apply for an ASI before the Kunming Intermediate People's Court or another Chinese court, which could then also be issued at short notice. The rights of the applicants would therefore be inadequately protected by an injunction issued in response to an action on the merits, which would only be issued after an ASI. In the meantime, the applicants would either be prevented from enforcing their patent rights or would face significant sanctions until an AASI was issued in the main proceedings. The applicants do not have to accept these disadvantages.

c)

- 51 Finally, further consideration of the mutual interests of the parties, including the potential damage to the parties, also speaks in favour of granting the interim measures.
- 52 If the applicants' application for the issuance of the AASI is rejected, there is – as already explained, there is a concrete risk that the respondents will apply to the Kunming Intermediate People's Court or another Chinese court for an ASI on the basis of the infringement suits now served on the first respondent at the EuroCIS trade fair and the AASI served by the Munich Regional Court, and that this ASI will be granted. This would have the consequences for the applicants already described under b). The applicants therefore face considerable damage.
- 53 If, on the other hand, the interim measures sought by the applicants are granted, the respondents will be prohibited from applying for an ASI and an AEI; any applications already filed must be withdrawn. Even if the order for provisional measures is wrongly issued because there is no threat of infringement of the patents at issue by an application for an ASI, the respondents are not prohibited from engaging in conduct that is fundamentally permitted. Rather, cross-border ASIs are fundamentally incompatible with the legal systems of the UPC Agreement member states and the right to justice.
- 54 The respondents do not suffer any significant disadvantage as a result of a preliminary order that was wrongfully issued. It cannot be entirely ruled out that the respondents may suffer damage as a result of the ban on ASI, for example in the form of legal costs. However, the damage they face is far less serious. Furthermore, the respondents are not prevented from enforcing their other rights before the Kunming Intermediate People's Court; in particular, they can continue the rate-setting proceedings. Even the FRAND-related issues can be clarified before the Chinese court. The interim measures requested by the applicants relate solely to a possible application for an ASI and AEI. Any associated damages are ultimately insignificant.
- 55 Finally, it is not an option to expect the applicants to wait any longer. As already explained, at this point in time, the application for an ASI is the last step that the respondents still have to take in order for the infringement to occur. The applicants will not necessarily be informed of such an application. The disadvantages associated with a subsequent AASI are so significant that they cannot be reasonably expected of the respondents.
- 56 Conversely, the fact that the first respondent will be present at the EuroCIS trade fair from 18 to 20 February 2025 requires that the applicants be granted the

the requested injunction at this point in time. Due to the difficulties associated with the service of court documents in the People's Republic of China, which are known to the court and can sometimes lead to delays of several months or even more than a year, the issuance of interim measures at a later date is hardly conceivable. This is because, in the meantime, until an AASI is served, the respondents could easily apply for an ASI and have it served on the applicants. As already explained, there are also sufficient grounds for this due to the fact that the infringement actions based on the patents at issue have now been served on the first respondent.

III.

- 57 The order for provisional measures requested by the applicants without prior hearing of the respondents appears appropriate and necessary in the present case, R. 206.3, 209.2 (c) RoP in conjunction with R. 212.1 RoP.
- 58 Without the issuance of an ex parte order, the applicants are likely to suffer irreparable harm due to the delay associated with involving the opposing party. There is a risk that the respondents will use their knowledge of the application for interim measures as an opportunity to apply for an ASI, which could be granted at short notice and even before an AASI is issued, and which could also prohibit the present proceedings. This risk is also very likely because the respondents have sufficient reason to secure their rate-setting procedure in the manner described. Hearing the respondents would result in the protection of the applicants' rights asserted here being curtailed or even undermined.

IV.

- 59 Since the requirements for the issuance of interim measures are met according to the above statements, the applicants' application under I. is to be granted. These are aimed at refraining from applying for or pursuing ASI and/or AEI. The specific applications clarify what is covered by the order under I. in any case.
- 60 However, the respondents cannot be prohibited from filing applications for ASI or AEI before all courts worldwide. There are no indications that the respondents may have considered such applications outside the People's Republic of China. Consequently, there is no imminent infringement of the patents at issue in this respect. On the other hand, the prohibition on applications for ASI or AEI had to be pronounced with regard to other Chinese courts as well, because the respondents are not prevented from filing a corresponding application before another Chinese court instead of the Kunming Intermediate People's Court.
- 61 Furthermore, no distinction was to be made between direct and indirect obstacles or prohibitions. It is not clear what such direct or indirect

obstacles or prohibitions should consist and how they should be differentiated.

62 Finally, no deadline was to be set for the withdrawal of ASI or AEI that had already been applied for. The unsuccessful expiry of the deadline cannot be subject to special sanctions. If the respondents do not comply with this order, the court may impose a penalty payment. The court may do so from the date on which the interim measures become enforceable, which begins with the service of this order. If ASI or AEI have already been applied for, they must be withdrawn immediately from this date.

V.

63 Pursuant to Rule 211.5 RoP, the court must order the provision of security if the order for interim measures is issued without prior hearing of the defendant, as in this case, unless there are special circumstances that militate against the ordering of such security.

64 In the present case, there are special circumstances which, exceptionally, militate against such an order. Apart from the fact that the damage incurred by the respondents as a result of the revocation of this order will be minor, the order to provide security poses considerable obstacles for the applicants in terms of time. Due to the difficulties involved in serving documents in the People's Republic of China, as explained above, the order for interim measures is to be served at the EuroCIS trade fair, which ends the very next day. It is basically impossible for a party to provide security in such a short time. This justifies, in exceptional cases, refraining from ordering security to be provided.

VI.

65 No decision on costs is to be made in the present case. The Rules of Procedure only provide for such a decision in the main proceedings (cf. Rule 118.5 RoP), but not in proceedings for the order of provisional measures. The costs of the summary proceedings are generally to be claimed in the main proceedings.

VII.

66 Furthermore, pursuant to Rule 213.1 RoP, a deadline for initiating proceedings on the merits had to be set. This is not at the discretion of the court (Munich local division, order of 9 December 2024, CFI_755/2024 – Avago/Realtek). In this respect, a period of 31 calendar days or 20 working days, whichever is longer, from the date of service of the order on the respondent appears reasonable. The applicant has not commented on such a time limit and has not included it in its applications.

ORDER

I.

By way of interim measures, due to the particular urgency of the matter and without prior hearing of the respondents, the respondents are each prohibited from

initiate and/or pursue proceedings for an anti-suit injunction before the Kunming Intermediate People's Court in China and/or other courts in China and/or apply for other equivalent judicial or administrative measures to prevent and/or restrain the applicants from pursuing or continuing patent infringement proceedings based on their standard-essential European patents subject to the jurisdiction of the UPC before the competent chambers of the UPC within the scope of the EPC, and/or enforcing any resulting judgments or measures,

in particular also if and to the extent that the applicants are prevented and/or are to be prevented from

- the patent infringement proceedings filed on 10 February 2024 before the Munich local division in respect of patent EP 2 243 229 and before the Mannheim local division in respect of patent EP 3 799 333, or to extend further claims or to bring further patent infringement actions against the respondents here or affiliated group companies or other companies of the SunmiGroup before the Unified Patent Court ("anti-suit injunction");
- injunctions issued by the Unified Patent Court against the respondents or the defendants in the patent infringement actions before the Munich local division for patent EP 2 243 229 and before the Mannheim local division for patent EP 3 799 333 dated 10 February 2024 (namely the first respondent) and Sunmi France SAS and Sunmi Poland Sp z.o.o.) or affiliated group companies or other companies of the Sunmi Group ("anti-enforcement injunction");

whereby this injunction also includes, in particular

- the requirement to withdraw any applications for an anti-suit injunction before the Kunming Intermediate People's Court or any other court in China or to take other procedural measures to finally revoke such an anti-suit injunction with effect for the scope of application of the UPC Agreement,

- an immediate prohibition on continuing any anti-suit injunction proceedings with effect for the scope of application of the UPC Agreement, except for the purpose of withdrawing the application,
- an injunction prohibiting the applicants from bringing patent infringement proceedings based on their standard-essential European patents subject to the jurisdiction of the UPC before the competent chambers of the UPC within the scope of the UPC Agreement and/or enforcing any resulting judgments by means of a court or administrative order prohibiting the present proceedings,

whereby the above obligations and prohibitions also include exerting appropriate influence on affiliated companies by making full use of the possibilities offered by group law.

II.

In the event of any violation of the order under Section I, the respondents shall pay the court a (repeated, if necessary) penalty of up to €250,000.00 for each day of the violation.

III.

The order is immediately enforceable without security.

IV.

It is ordered that English-language documents do not need to be translated.

V.

In all other respects, the application is dismissed.

INSTRUCTION TO THE ASSISTANT REGISTRY

This order shall be served on the defendants together with the application dated 12 February 2025 and the statement dated 17 February 2025, including all annexes, to the first defendant at the EuroCIS trade fair in Düsseldorf, Düsseldorf Exhibition Centre, Hall 9, Stand B58.

NOTE TO THE APPLICANT

If the main proceedings are not initiated within a period of no more than 31 calendar days or 20 working days, whichever is longer, from the date of

service to the respective respondent, the court may, upon application by the respondent, order that the present order be revoked or otherwise cease to have effect (Art. 62 (5), 60 (8) UPC Agreement, Rule 213.1 RoP).

NOTICE TO THE DEFENDANT

The respondent may request a review of the order within 30 days of the measure being enforced (Art. 62 (5), 60 (6) UPC Agreement, Rule 212.3, 197.3 RoP).

NOTES ON ENFORCEMENT (ART. 82 UPC AGREEMENT, RULE 354 RoP)

The order is enforceable upon delivery without security.

DETAILS OF THE ORDER

UPC number: UPC_CFI_112/2025
No. of the associated proceedings Application no.: 7300/2025
Type of application: Application for interim measures
(Rule 206 of the Rules of
Procedure)

Ulrike Voß (Presiding Judge)	
Dr Daniel Voß (legally qualified judge)	
Dr Walter Schober (legally qualified judge)	
for the Deputy-Registrar	

Note:

This document is the edited version of the order intended for public consumption. It is valid without the signatures of the judges involved and the representative of the Deputy-Registrar.

Daniel
Voß²²


Digitally signed by Daniel Voß
Date: 19 February 2025, 08:44:20
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