



Reference numbers:

APL_23093/2025

UPC_CoA_430/2025

ORDER
of the Court of Appeal of the Unified Patent Court
concerning a request for security for costs
issued on 9 July 2025

APPELLANT (DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

CHINT NEW ENERGY TECHNOLOGY CO., LTD.

No.1 Jisheng Road, Jianshan New Zone – 314415, Haining City, Zhejiang Province – People’s Republic of China

hereinafter: Chint

represented by Dr. Jan Phillip Rektorschek and other representatives of Taylor Wessing PartGmbB

RESPONDENT (CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

JINGAO SOLAR CO., LTD.

Jinglong Street, Ningjin County – 055550, Xingtai City – Hebei Province – People’s Republic of China

hereinafter: JingAo

represented by Dr. Christopher Maierhöfer and other representatives of Bird & Bird LLP

PATENT AT ISSUE

EP 2 787 541

PANEL AND DECIDING JUDGES

Panel 1a

Klaus Grabinski, President of the Court of Appeal

Peter Blok, legally qualified judge and judge-rapporteur

Emanuel Gougé, legally qualified judge

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Munich Local Division, dated 5 May 2025
- Reference numbers:
App_18184/2025
ACT_42211/2024
UPC_CFI_425/2024
ORD_18305/2025

FACTS AND REQUESTS OF THE PARTIES

1. JingAo is the registered proprietor of European patent 2 787 541 (hereinafter: EP 541) relating to a solar cell.
2. JingAo started an infringement action against Chint and five other parties (hereinafter, jointly: Chint et al.) before the Munich Local Division on the basis of EP 541 (ACT_42211/2024 UPC_CFI_425/2024). Chint et al. filed a counterclaim for revocation.
3. Chint et al. lodged an application under R. 158 of the Rules of Procedure of the Unified Patent Court (hereinafter: RoP), requesting that the Court order JingAo to provide security for costs. By order of 19 March 2025, the Munich Local Division granted the application and ordered that JingAo provide security in the amount of € 200,000 (App_54919/2024 UPC_CFI_425/2024). This order was not appealed.
4. JingAo also lodged a R. 158 RoP application, requesting that the Court order Chint et al. to provide security for costs. By order of 5 May 2025, the judge-rapporteur of the Munich Local Division granted the application against Chint and rejected it in respect of the five other defendants in the infringement action (hereinafter: the impugned order). The judge-rapporteur granted leave to appeal the order. The judge-rapporteur considered that it is not only the experience of the European national courts, but also of this Court that requests for service from the Chinese authorities are, in many cases, either not forwarded at all or objected to and returned. A cost decision may be deemed unenforceable in a country that fails to fulfil its obligations under the Hague Service Convention. The judge-rapporteur left open the question of whether a party acting solely as claimant is entitled to request security under Art. 69(4) of the Agreement on a Unified Patent Court (hereinafter: UPCA) and R. 158 RoP. The judge-rapporteur considered that JingAo is not merely the claimant in the infringement action, but also the defendant in respect of the counterclaim for revocation.
5. Chint lodged an appeal against the impugned order, requesting that the Court of Appeal revoke it insofar as it granted the application against Chint, reject the application against Chint and order JingAo to bear the costs of the appeal. In its statement of grounds of appeal, Chint argues – in summary – that Art. 69(4) UPCA does not provide a legal basis for an order against a party who is both the defendant in an infringement action and the claimant in respect of a counterclaim for

revocation. An order to provide security would be an undue restriction for a defendant in an infringement action. In addition, Chint submits that the Munich Local Division's reasoning is contradictory. The finding that Chint could be ordered to bear the costs alone as the sole infringer, cannot be reconciled with the fact that the Local Division relied on Chint's position as counterclaimant as the basis for the order to provide security. JingAo requests that the Court of Appeal dismiss the appeal and order Chint to bear the costs of the appeal. It argues – in summary – that R. 158 RoP provides the legal basis for the order against Chint and that the principle of equality of arms requires both parties to be ordered to provide security.

6. In parallel with the lodging of the statement of appeal against the impugned order, Chint filed an application requesting the Court of Appeal to order that the lodging of the appeal have suspensive effect, or, in the alternative, to expedite the appeal proceedings. By order of 20 May 2025, the Court of Appeal rejected both the application for suspensive effect and the request for expedition (App_23094/2025 APL_23093/2025 UPC_CoA_430/2025).

GROUND FOR THE ORDER

7. The appeal against the impugned order is inadmissible. The impugned order is a security for costs order issued by the judge-rapporteur. This type of order is considered a case management order under R. 333.1 RoP (CoA 14 January 2025, UPC_CoA_651/2024, APL_59329/2024, Total Semiconductor v Texas Instruments). Such an order may only be appealed if it has first been reviewed by the panel pursuant to R.333.1 RoP. This system prevents unnecessary involvement of the Court of Appeal where the panel of the Court of First Instance does not share the opinion of the judge-rapporteur (CoA 21 March 2024, UPC_CoA_486/2023, APL_595643/2023, Netgear v Huawei).
8. The fact that the inadmissibility of the appeal was not raised by JingAo does not alter the assessment. The Court of Appeal is required to examine the admissibility of the appeal of its own motion.
9. The fact that the judge-rapporteur in the impugned order expressly ruled that an appeal may be filed, does not alter the assessment either. The admissibility of an appeal is not at the discretion of the judge-rapporteur of the Court of First Instance. Furthermore, the mere ruling by the judge-rapporteur that an order is appealable is, in itself, insufficient to create a legitimate expectation regarding the admissibility of the appeal, given the Court of Appeal's consistent caselaw on the inadmissibility of appeals against case management orders issued by the judge-rapporteur.
10. Chint's request to refer the question of the admissibility of the appeal to the full Court of Appeal is rejected. Under R. 238A RoP, the panel may refer an action to the full Court of Appeal if the case is of exceptional importance and, in particular, where the decision may affect the consistency and unity of the Court's case law. This case is not of exceptional importance. There is no inconsistency in the Court of Appeal's caselaw on the admissibility of case management

orders issued by the judge-rapporteur. The two orders cited above were issued by panel 2. Panel 1 concurs with this caselaw and applies it to the facts of the present case. There is also no divergent caselaw regarding the rule that the Court of Appeal must examine the admissibility of an appeal on its own motion. For example, in the above cited case of Total Semiconductor v Texas Instruments (CoA 14 January 2025, UPC_CoA_651/2024, APL_59329/2024, para 2), the standing judge of panel 2 raised the question of the admissibility of a judge-rapporteur order on security for costs of her own motion.

11. As this order is not the final order concluding the action, the Court of Appeal will not issue a costs order.

ORDER

The appeal is inadmissible.

This order was issued on 9 July 2025.

Klaus Grabinski
President of the Court of Appeal

Peter Blok
Legally qualified judge and judge-rapporteur

Emmanuel Gougé
Legally qualified judge