

UPC_CFI_688/2025

**Final Order
of the Court of First Instance of the Unified Patent Court
delivered on 25/08/2025**

Headnote: A lawyer authorised to represent a party in a proceeding on provisional measures is not automatically authorised to represent the same party in a subsequent infringement action concerning the same patent, even if there is a link between the two proceedings (cf. e.g. Article 32.2 UPCA and Rule 213 RoP). Hence, the defendant's representative in the proceedings on provisional measures is not automatically authorised to accept service of a statement of claim in a subsequent infringement action. When the defendant has its statutory seat, central administration and principal place of business outside the territory of the contracting member states of the UPCA, service shall normally be done in accordance with Rule 274 RoP.

Keywords: service, Rule 213 RoP

APPLICANT/CLAIMANT:

**MED–EL Elektromedizinische Geräte Gesellschaft
m.b.H.**
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Represented by Anna-Katharina
Dr. Friesse-Okoro

DEFENDANTS:

1. Zhejiang Nurotron Biotechnology Co., Ltd.
(Defendant 1) - No. 17 Longtan Road Cangqian Street,
Yuhang District, - 0000 - Hangzhou City – CN

2. Nurotron Global SARL
(Defendant 2) - 7 Rue des Torterelles, 40510
Seignosse, France

PATENT AT ISSUE

Patent no.

Proprietor/s

EP 4 074 373

MED–EL Elektromedizinische Geräte Gesellschaft m.b.H.

PANEL

Panel of the Hamburg Local Division

DECIDING JUDGE

This order was issued by judge-rapporteur Stefan Johansson

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT-MATTER OF THE PROCEEDINGS

Infringement action

POINTS AT ISSUE

1. The Applicant/Claimant argues that the Statement of Claim in the main proceeding (an infringement action, initiated in accordance with Rule 213.1 RoP) can/shall be served to the Defendant's representative in the procedure on provisional measures, even though the Defendant objects to this.

SUMMARY OF FACTS AND REQUESTS

2. On 10 June 2025, the Applicant submitted an application for provisional measures (ex parte) against Defendant 1 (ACT_27414/2025, UPC_CFI_514/2025). The Court granted the application on 11 June 2025 (ORD_27826/2025), and ordered Defendant 1 inter alia to cease and desist from offering, placing on the market, using, or importing or storing for those purposes in the territory of the Contracting Member States of the UPCA, an implant system according to claim 1 of EP 4 074 373 (the Patent-in-Suit), and to cease and desist from presenting any products according to claim 1 of the Patent-in-Suit for these purposes, in particular the cochlear implant system with the trade name "CS-30A", during trade shows in the territory of the Contracting Member States of the UPCA, in particular during the ESPCI 2025. The Applicant officially served the order on Defendant 1 on 27 June 2025 via its legal counsel Mr. Crespo and Defendant 1 accepted the service.
3. On 26 July 2025, Defendant 1 submitted a request to review the order on provisional measures (App_32713/2025, UPC_CFI_514/2025). In those proceedings, Defendant 1 is represented by Clifford Chance LLP and Adrián Crespo Velasco is authorized to accept service, but it is explicitly stated in the application for review that Defendant 1 rejects service of the main action by alternative means and, in particular, electronic service at any email address of its employees and/or the general address info@nurotron.com, which is not a valid means of service in the

People's Republic of China pursuant to the 1965 Hague Convention in connection with Rule 275 RoP et seq..

4. On 31 July 2025, the Applicant/Claimant submitted its Statement of Claim in the main proceeding (this infringement action). In the Statement of Claim, the Claimant requested that the statement of claim be served to the legal representative of Defendant 1 who accepted service of the order on provisional measures and who filed the request for review of said order. Alternatively, the Claimant requests that the action shall be served on Defendant 1 at the seat of Defendant 2, since Defendant 2 seems to act as the European branch of Defendant 1.
5. The Court issued a preliminary order on 1 August 2025, where the Applicant/Claimant was invited to comment on the following:

"The court informs the Claimant that service on the statement of claim to the legal representative of Defendant 1) in the proceedings of provisional measures and alternatively at the seat of Defendant 2) is not applicable. The legal representatives explicitly stated in the review of the order that the Defendant 1) rejects service of the main action by alternative means.

The Court of Appeal (CoA) has confirmed a decision of the Local Division Hamburg, according to which service on a Chinese defendant via a German branch is not permitted. Reference is made to the decision of the CoA of 5 August 2024 (UPC_CoA_183/2024) and the decision of the Local Division Hamburg of 18 April 2024 (ORD_20986/2024 in ACT_19012/2024). Nothing else should apply with regard to service on Defendant 2), that is based in France and for which it is merely asserted in general terms that it is a European branch. The same should apply to service on the legal representatives in the proceedings for provisional measures. No legal provision has been presented which indicates that service on them is possible.

Against this background, it is asked whether the application for service the statement of claim to be served on the legal representatives of the Defendant 1) in the proceedings for provisional measures or alternatively, on the Defendant 2) is upheld."

6. In its reply, the Applicant/Claimant amended its application for service of the Statement of Claim on Defendant 1 and now requests:
 - that the Statement of Claim shall be served on the legal representative of Defendant 1 who accepted service of the Order of the LD Hamburg in the proceedings for provisional measures (UPC_CFI_514/2025) and who filed an application for review of the order (App_32713/2025),or, in the alternative,
 - that the Statement of Claim shall be served regularly on Defendant 1 in accordance with the Hague Convention.
7. The Applicant's/Claimant's grounds and arguments for allowing service on the legal representative in the proceedings on provisional measures can be summarized as follows.

The Statement of Claim may be served on the representatives of Defendant 1) in the proceedings for provisional measures according to Rule 271.1(b) RoP, as Defendant 1 cannot arbitrarily restrict the power of attorney of its representatives to exclude representation in the main proceedings following the proceedings for provisional measures. The proceedings for provisional measures and the main proceedings are inextricably linked by Rule 213.1 RoP. Allowing the representatives of Defendant 1) to

refuse service of the Statement of Claim would not only defeat the purpose of Rule 213.1 RoP, it would also unfairly block the main proceedings for the coming months.

Art. 48(1) UPCA and Rule 8.1 RoP provide that a party must be represented in proceedings before the UPC. This representation requirement is meant to protect the parties, and to ensure efficient conduct of the proceedings before the Court. Once a party has named a representative, the RoP therefore do not allow a party to restrict the power of attorney of said representative. For instance, a change of representative by revoking (i.e. completely restricting) the power of attorney of a party's current representative is only possible under Rule 293 RoP, when said party notifies the Court that a new representative shall in future be representing the party concerned. Similarly, a party should not be allowed to restrict its representative's power of attorney to exclude service in proceedings that are inextricably linked, as this would lead to inequitable and significant delays of the proceedings.

This is supported by recent case law of the UPC Local Division Mannheim (UPC CFI 445/2025, decision dated 09 July 2025). In this decision, the defendants' representatives in the main proceedings refused to accept the service of an anti-anti-suit-injunction issued as a pre-liminary injunction, but since these proceedings were inextricably linked to the main proceedings the LD Mannheim therefore found that "the defendants cannot limit the power of attorney for conducting the legal dispute before the UPC to specific actions arbitrarily chosen by the defendants", and that argued in context with the anti-suit injunction that this specific request and the proceeding on the merits have an indissoluble connection. Consequently, and to avoid further delay in the main proceedings, the LD Mannheim ordered in this proceeding the service of said order to the defendants' representatives per bailiff and threatened to impose a fine of up to EUR 100.000,00 for the event that the defendants' representatives should not accept the order.

The above considerations also apply to the present case, where the Court has issued an ex parte injunction in the proceedings for provisional measures and the Plaintiff followed by lodging the Statement of Claim within the period set by the Court pursuant to Rule 213.1 RoP. The proceedings for preliminary measures are inextricably linked to the main proceedings by Rule 213.1 RoP and therefore Defendant 1) may not restrict the power of attorney of its representatives to exclude service in the main proceedings.

It should also be noted that the Court of Appeal recently acknowledged that the competent Chinese authority in the past repeatedly failed to serve court documents despite the Court having fulfilled all the formal requirements under the Hague Service Convention (cf. UPC CoA 431/2025, decision of 09 July 2025, p. 5, margin no. 15 et seq.).

REASONS FOR THE ORDER

8. According to Article 48(1) UPCA and Rule 8.1 RoP, the parties shall – with a few exceptions that are irrelevant here – be represented by lawyers authorised to practise before a court of a contracting member state. However, this does not mean that the parties have to be represented by the same lawyer in all proceedings before the Court. Nor does it mean that a lawyer authorised to represent a party in a proceeding on provisional measures automatically is authorised to represent the same party in a subsequent infringement action concerning the same patent, even if there is a link between the two proceedings (cf. e.g. Article 32.2 UPCA and Rule 213 RoP). Hence, the link between the proceedings in this case is different from the one

assessed by LD Mannheim in case UPC CFI 445/2025, where it was held that the representative in the main proceeding (an infringement action) could be served an application that was inextricably linked to that main proceeding, even if the power of attorney was limited in this respect.

9. Since Defendant 1 has its statutory seat, central administration and principal place of business outside the territory of the contracting member states of the UPCA, service shall be done in accordance with Rule 274 RoP. In this case, this means that an attempt to serve Defendant 1 the Statement of Claim in accordance with the Hague Service Convention shall be done, see Rule 274(a)(ii) RoP.
10. It should be noted that Defendant 2 has already been served the Statement of Claim. This order does not affect that service.

ORDER

The request for service on the representative in the proceeding on provisional measures is dismissed. Instead, service shall be done in accordance with the Hague Service Convention.

Issued in Hamburg on 25 August 2025

Stefan Johansson
Judge-rapporteur

INFORMATION ABOUT APPEAL/REVIEW

According to Rule 333.1 RoP, a case management order made by the judge-rapporteur or the presiding judge can be reviewed by the panel, on a reasoned Application by a party.

ORDER DETAILS

Order no. ORD_35448/2025 in ACTION NUMBER: ACT_33777/2025
UPC number: UPC_CFI_688/2025
Action type: Infringement Action