Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Central Division

Paris Seat

ORDER
of the Court of First Instance of the Unified Patent Court
Central division (Paris seat)
issued on 1 September 2025
concerning the Preliminary objection No. App_31242/2025
UPC_CFI_258/2025

HEADNOTES:

1. The "straw company" theory has a legal basis in European Union law and may be relevant for the purpose of assessing the "same parties" element under Article 33 (4) 'UPCA'.

2. The fact that two companies have concerted a common procedural strategy to defend against an infringement action is not sufficient to establish that the company involved in the second proceeding acted as a "straw company" for the company involved in the first.

KEYWORDS:

Preliminary objection. "Same parties".

APPLICANT:

Seoul Viosys Co., Ltd. - 65-16, Sandan-ro 163 beongil, Danwongu, Ansansi, Gyeonggido, 15429 Republic of Korea

represented by Olaf Isfort, Schneiders & Behrendt PartmbB, Rechts- und Patentanwälte, Bolko Ehlgen, Julia Schönbohm and Cordt-Magnus van Geuns-Rosch, Linklaters LLP,

RESPONDENT:

Emporia UK and Ireland Ltd. - Park Road, Cardinal Point, Rickmansworth, WD3 1 RE Hertford-shire United Kingdom

represented by Bernhard Ganahl, HGF Europe LLP, and Dirk Jestaedt, Krieger Mes PartG mbB

PATENT AT ISSUE:

European patent n° EP 3 926 698

PANEL:

Panel 2:

Presiding judge and judge-rapporteur	Paolo Catallozzi
Legally qualified judge	Tatyana Zhilova
Technically qualified judge	Alessandra Sani

DECIDING JUDGE:

This order has been issued by the Presiding judge and judge-rapporteur Paolo Catallozzi

SUMMARY OF FACTS:

1. On 9 April 2025 Emporia UK and Ireland Ltd. filed a revocation action against Seoul Viosys Co., Ltd. with regard to the patent at issue before this Central Division, registered as No. ACT_14399/2025 UPC_CFI_258/2025.

2. On 27 June 2025 the defendant in the revocation action lodged a Preliminary objection requesting the Court to dismiss this revocation action as inadmissible under Article 33 (4), Sentence 2, of the Unified Patent Court Agreement ('UPCA'), arguing that this Central Division lacks competence as the patent at issue is already the subject of a parallel infringement action and a counterclaim for revocation between the same parties, currently pending before the Court of Appeal.

3. The applicant notes that the claimant in this revocation action is the supplier of the embodiment accused as infringing and acts as a "straw company" for the defendants in the parallel proceedings, in particular distributor ex-pert klein GmbH, and therefore the claimant and this latter company must thus be considered as the same party for purposes of the admissibility of the action. They specify that the counterclaim for revocation has been dismissed by Düsseldorf Local Division and is currently pending on appeal. They further point out that the revocation action is an express and concerted strategy to defend against the infringement action and this constitutes an obvious attempt to circumvent the scheme of the Unified Patent Court Agreement.

4. On 8 July 2025 the respondent submitted their comment, requesting this Court to dismiss the Preliminary objection. They object that ex-pert klein GmbH, defendant and counterclaimant in the proceedings introduced before Düsseldorf Local Division, is the same party as the claimant in the current proceedings, underlying that they don't have any link; the only point is that the Emporia group delivers mobile phones to the expert group in Germany. They further add that the existence of comparable interests or a concerted strategy is incorrect and, anyway,

irrelevant for considering those companies a single party. Lastly, they contend that there is no legal basis for the "straw company" argument.

GROUNDS FOR THE ORDER:

Article 33 (4), second proposition, 'UPCA'.

5. Article 33 (4) 'UPCA' provides that "Actions referred to in Article 32 (1) (b) and (d) shall be brought before the central division. If, however, an action for infringement as referred to in Article 32 (1) (a) between the same parties relating to the same patent has been brought before a local or a regional division, these actions may only be brought before the same local or regional division."

6. This provision establishes a rule of jurisdiction for the Unified Patent Court ('UPC'), stipulating that the central division generally has jurisdiction over actions for declarations of non-infringement of patents or for revocation of patents. The second sentence, however, introduces an exception to this rule – in addition to the exception under paragraph 7 of the same Article concerning the forum chosen by the parties. This exception provides that if a patent infringement action between the same parties regarding the same patent has already been initiated before a local or regional division, the latter division attracts jurisdiction over any subsequent actions concerning the same patent and involving the same parties.

7. Therefore, the second sentence of Article 33 (4) is not a provision on *lis pendens*, but rather a rule on derogatory jurisdiction that overrides the general competence of the central division for declaration of non-infringement actions and revocation actions. It grants jurisdiction to the local division previously seized to hear a case between the same parties concerning the same patent.

8. In the case at hand, the applicant argues that the patent in question has already been litigated in an infringement claim before the Düsseldorf Local Division against distributors e-Commerce GmbH and ex-pert klein GmbH, distributors of the allegedly infringing product. In that proceeding, ex-pert klein GmbH filed a counterclaim for invalidity, and the case is currently pending on appeal.

Theory of the "straw company". Legal basis.

9. The applicant contends that ex-pert klein GmbH and Emporia UK and Ireland Ltd., the claimant in the present main invalidity proceedings, should be considered the same party for the purposes of applying Article 33 (4) 'UPCA'. The applicant asserts that Emporia UK and Ireland Ltd. is acting as a "straw company", and, as a result, this Central Division lacks jurisdiction to decide on the main invalidity action brought by Emporia UK and Ireland Ltd.

10. To support this argument, the applicant cites jurisprudence from the Court of Justice of the European Union, which has stated that the concept of an undertaking is to be understood as an economic unit, even if that economic unit consists of several legal persons (ECJ 10 September 2009, C-97/08 P, *Akzo Nobel and Others v. Commission*; CJEU 19 January 2023, C-680/20, *Unilever Italia Mkt. Operations*). They also refer to a Unified Patent Court ruling which held that different legal persons may be considered the same party if they engage in legal activity that cause them to appear as related and if there is an agreement between them (UPC, Paris CD, order issued on 13 November 2023, UPC_CFI_255/2023).

11. The applicant highlights several elements to demonstrate that the respondent, Emporia UK and Ireland Ltd., is in fact acting as a “straw company”. Specifically, they note that Emporia UK and Ireland Ltd. and ex-pert klein GmbH share the same legal representatives in the two judicial proceedings, and that the revocation action is an express and concerted strategy to defend against the infringement action. This is inferred from correspondence between the parent company, Emporia Telecom GmbH & Co. KG, and the applicant (Exhibit ‘LL1’). This correspondence shows that the parent company was aware of the pending litigation involving the distributors, knew of the relevant documents, and mentioned prior art that was later used in ex-pert klein GmbH’s appeal in the separate proceeding. Additionally, the invalidity claims brought by ex-pert klein GmbH in the counterclaim and by Emporia UK and Ireland Ltd. in the main proceedings are identical, even down to the numbering of the exhibits. Lastly, in the appeal proceedings, ex-pert klein GmbH requested a stay pending the decision on the present invalidity action. The applicant argues that this constitutes an impermissible circumvention of the ‘UPC’’s jurisdictional framework, allowing a “straw” party to have a “second chance” at invalidating the patent at issue.

12. The respondent, however, disputes that the “straw company” argument has a legal basis and, in any event, denies that Emporia UK and Ireland Ltd. is a “straw company” for ex-pert klein GmbH. The respondent emphasizes the differences between the two entities, whose only commonality is that the Emporia group delivers mobile phones to the Expert group in Germany, and argues that the correspondence cited in Exhibit ‘LL1’ merely demonstrates an exchange of information between the two companies. This circumstance, the respondent claims, is entirely normal in a situation where there is a convergence of interests aimed at defending against a patent infringement action related to licensed products.

13. In order to address the debated issue about whether the theory of the “straw company” has a legal basis within the EU law, it’s important to define a “straw company”.

14. This term refers to a company that exists only formally, without any real or significant business activity. Such a company often lacks its own assets or employees and is used by a person or entity to conceal the true identity of the owner or to carry out activities that the latter does not want to or cannot perform directly.

15. As noted in the order of this Court of 13 November 2023, UPC_CFI_255/2023, “the described scheme relates to a situation in which properties are fictitiously registered in the name of a person or, in general, a contract is fictitiously concluded by a person with the agreement that the property will be acquired by a different person or that the legal effects of the contract will be produced with regard to that different person. The assessment that a company is acting as a straw company requires a legal activity that appears as related to it and the agreement that the relative effects will be produced in respect of a different entity”.

16. The concept of a “straw company” is akin to that of contractual simulation, which is a secret agreement between parties to create a contractual appearance that differs from reality. This concept exists in many European civil law systems.

17. While European Union law – the primary source of law when hearing a case brought before this Court pursuant to Article 24 ‘UPCA’ – does not specifically provide for an institution corresponding to contractual simulation or explicitly regulate “straw companies”, it does include

a general principle of the prohibition of abuse of rights. This principle, though not explicitly mentioned in the Treaties, has been recognized and developed by the Court of Justice of the European Union.

18. The CJEU has held that EU law cannot be invoked to circumvent the application of legal rules or to pursue objectives contrary to the purpose of those rules. Where the use of a legal instrument results in an abuse of a right, the effects of the activity formally undertaken by the "straw company" should be directly attributed to the interposing company, even with regard to third parties.

19. For example, the Court has ruled that the benefits of EU law can be denied to transactions that, while formally compliant with the rules, have the sole purpose of obtaining an undue tax advantage without any valid economic reason (CJEU 21 February 2006, C-255/02, *Halifax and Others,* concerning the interpretation of Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, and CJEU 12 September 2006, C-196/04, *Cadbury Schweppes and Cadbury Schweppes Overseas*, concerning the interpretation of Articles 43, 49 and 56 EC). With specific reference to patent law and intellectual property in general, the Court has emphasized that the rights of the holder cannot be exercised abusively, as this could constitute an abuse of a dominant position under Article 102 TFEU (see, in relation to the refusal to grant access to an indispensable product or service for a given activity, CJEU 16 July 2015, C-170/13, *Huawei Technologies*; CJEU 29 April 2004, C-418/01, *IMS Health;* ECJ 6 April 1995, C-241/91 P, "Magill").

20. The above considerations lead to the conclusion that, contrary to the defendant's assertion, the phenomenon of the "straw company" is not irrelevant under European Union law. When such an entity is used to circumvent the application of EU rules or to frustrate the interests those rules are intended to protect, the actions of the "straw company" can be attributed to the party behind it.

"Straw company": requirements.

21. As previously mentioned, the phenomenon of a "straw company" is characterized by the fact that the company lacks effective operational activity, does not conduct real commercial, productive, or service-related business, and is without a significant organizational structure. It is used solely as a front company or a nominee for the true owner.

22. A party that asserts a company is a "straw company" bears the corresponding burden of proof where this allegation is contested or likely to be contested, in application of the general rule under Rule 171 (1) 'RoP'.

23. Now, in the opinion of this Court, the evidence provided by the applicant is not sufficient to demonstrate the nature of the respondent as a straw company.

24. Indeed, the circumstances alleged by the applicant – that the two companies are represented by the same legal counsels in the two proceedings, that Emporia parent company demonstrated detailed knowledge of the litigation involving ex-pert klein GmbH from the outset, that the attacks on the patent's validity raised by the two companies in their respective proceedings are substantially overlapping and that ex-pert klein GmbH requested for a stay of the proceedings

pending before the Court of appeal in view of the filing of the current action – may be considered indicative of a coordination of the two companies' litigation strategies, but they do not constitute proof that Emporia UK and Ireland Ltd. was created or used as a nominee for ex-pert klein GmbH to carry out specific initiatives concerning exclusively the latter's business activities.

25. The fact that the two companies resorted to substantially overlapping defence strategies does not mean that they are not conducting autonomous business activities or pursuing their own interests, even if, in this case, those interests converge in challenging the patent claimed by the applicant.

26. Indeed, from a business standpoint, it is entirely reasonable for a distributor facing an action for patent infringement to inform its supplier and for them to coordinate their defensive strategies, including in judicial proceedings.

27. At last, this Court recalls that, as observed in the aforementioned order of this Central Division of 13 November 2023, UPC_CFI_255/2023, the Unified Patent Court framework does not exclude that a patent may be attacked by different subjects, even if linked by organizational ties or commercial relationships, and by the means of different claims, even if structured in the same grounds of invalidity.

28. For these reasons, the Preliminary objection filed by the applicant cannot be granted.

ORDER

The Court,

rejects the Preliminary objection filed by Seoul Viosys Co., Ltd. on 27 June 2025.

Issued on 1 September 2025.

The Presiding judge and judge-rapporteur

Paolo Catallozzi

Paolo Catallozzi Firmato digitalmente da Paolo Catallozzi Data: 2025.09.01 11:32:45 +02'00'

ORDER DETAILS

Order no. ORD_32540/2025 in ACTION NUMBER: ACT_14399/2025
UPC number: UPC_CFI_258/2025
Action type: Revocation Action
Related proceeding no. Application No.: 31242/2025
Application Type: Preliminary objection