



Düsseldorf Local Division UPC_CFI_541/2025

Decision of the Court of First Instance of the Unified Patent Court issued on 17 November 2025 concerning EP 3 859 566

CLAIMANT:

Leap Tools Inc., 1255 Bay St., Unit 200A, Toronto, ON M5R 249, Canada, represented by its CEO Pawel Rajszel

represented by: Attorney-at-law Dr Henrik Timmann, Attorney at law Dr Melanie Strobel, rospatt Rechtsanwälte PartGmbH, Emanuel-Leutze-Straße 11, 40547 Düsseldorf, Germany

contributing: Patent Attorney Dr Manuel Schrader, Patent Attorney Dr Volker Mergel, Blumbach Zinngrebe Patentanwälte PartGmbH

electronic address for service: UPC-LeapTools-EP566@rospatt.de

DEFENDANTS:

1. **Wizart Inc.**, 919 North Market St, Suite 950, Wilmington, 19801-3036, DE, USA, represented by its CEO Vasili Yavarchuk,

Defendant 1 represented by: Patent Attorney Prof Dr Aloys Hüttermann, Patent Attorney Dr Rolf Claessen, Patent Attorney Fabian Pech, Michalski Hüttermann & Partner Patentanwälte mbB, Kaistraße 16A, 40221, Düsseldorf, Germany

electronic address for service: claessen@mhpatent.de

2. **Wizart LLC**, 919 North Market St, Suite 950, Wilmington, 19801-3036, DE, USA, represented by its CEO Vasili Yavarchuk,

PATENT IN SUIT:

European Patent n° 3 859 566

PANEL/DIVISION:

Panel of the Local Division in Düsseldorf

DECIDING JUDGES:

This decision was issued by Presiding Judge Thomas, legally qualified judge Dr Schumacher acting as judge-rapporteur and legally qualified judge Johansson.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT: R. 265.1 RoP – Application for leave to withdraw the action

1. The Claimant filed an infringement action dated 13 June 2025 against Defendant 1 and Defendant 2.
2. In the Statement of claim, the Claimant named '919 North Market St, Suite 950, Wilmington, 19801-3036, DE, USA' as address for both Defendants.
3. Service to this address failed for both Defendants. According to an on-site employee, both companies had moved to Newark.
4. The Claimant was able to find the address of a registered agent for Defendant 1 in Newark, namely Incorp Services, Inc.
5. With regard to Defendant 1, the Statement of claim was served at Incorp Services' address on 21 July 2025.
6. However, the Statement of claim could not be served at the address of Incorp Services with regard to Defendant 2. The person on site refused, stating that Incorp Services was not the registered agent for Defendant 2.
7. On 15 October 2025, the Court permitted that the Statement of claim be served to Defendant 2 by serving it to its CEO's business address in Poland.
8. In a brief dated 16 October 2025, the representatives of Defendant 1 announced that they were taking over representation of Defendant 1 only, not Defendant 2. According to Defendant 1, Defendant 2 is a non-existent company, as under this address only a Wizart Inc. can be reached and is listed in the commercial register.
9. By brief dated 20 October 2025, the Claimant applied to withdraw the infringement action against Defendant 2. The Claimant stated that the assertion of Defendant 1 raises doubts about the sense of pursuing the lawsuit against Defendant 2, apart from the delay this would entail.
10. The Statement of claim has not yet been served on Defendant 2.
11. Defendant 1 was given the opportunity to comment on the application. It did not provide any comments.

GROUND FOR THE DECISION:

12. The decision is based on R. 265.1 and 265.2 RoP.
13. Pursuant to R. 265.1 RoP, the claimant may apply to withdraw its action as long as a final decision on the action has not yet been issued. The Court shall decide the application after hearing the other party. The application to withdraw shall not be permitted if the other party

has a legitimate interest in the action being decided by the Court.

14. R. 265.1 RoP also applies if the action is not withdrawn in its entirety, but only in relation to some of several defendants (UPC_CFI_513/2023 (LD Munich), Decision of 13 August 2024 – Network System v. Texas Instruments; see also UPC_CoA_205/2024, Order of 4 June 2025, para. 17 – Nera Innovations v. Xiaomi, regarding the withdrawal of an appeal).
15. Defendant 2 has no legitimate interest in the action being decided by the Court. Given that the Statement of claim has not yet been served, the interests of Defendant 2 are of lesser importance. Service of the Statement of claim involves a defendant in the proceedings and usually entails the effort and cost of preparing a statement of defence (see UPC_CoA_205/2024, Order of 4 June 2025, para. 17 – Nera Innovations v. Xiaomi, regarding the withdrawal of an appeal). No other possible interests of Defendant 2 are apparent either.
16. As service has not yet been completed, it was unnecessary to hear Defendant 2. It does not seem reasonable to attempt to serve the application to withdraw at the CEO's business address in Poland. The CEO of Defendant 1 and Defendant 2 is the same person. As Defendant 1 has stated that Defendant 2 is a 'non-existent company', it cannot be assumed that service in Poland will be accepted.
17. The cost decision is based on R. 265.2(c) RoP. Following the withdrawal, the Claimant shall bear the costs with regard to Defendant 2.
18. With regard to Defendant 1, a change of representative has been announced by brief of 17 November 2025. However, it is not yet effective in the absence of a notification of the new representative, R. 293 RoP.

ORDER:

1. Withdrawal of the infringement action with regard to Defendant 2 is permitted.
2. The proceedings with regard to Defendant 2 are declared closed.
3. This decision shall be entered in the register.
4. With regard to Defendant 2, the costs of the infringement action are to be borne by the Claimant.

Issued in Düsseldorf on 17 November 2025

NAMES AND SIGNATURES

Presiding Judge Thomas	
Legally qualified Judge Dr Schumacher	
Legally qualified Judge Johansson	
For the Sub-Registrar	