

EIP

UPC orders provisional injunction on basis of infringement by equivalents

Washtower IP B.V., Washtower B.V. v Wasombouw B.V. et al. UPC_CFI_479/2025

LD The Hague, Order of 11 September 2025[1]

Washtower sought provisional injunctions against a number of defendants based on alleged infringement of their patent EP3522755, concerning a cabinet to hold a washing machine at waist level for easier access. Two products were alleged to infringe – the “Laundreezy” and the “Respekta Clara”.

The defendants raised a number of validity attacks on the patent, but the court remained sufficiently convinced of the patent’s validity.

There were also a number of non-infringement arguments, which were similar in respect of both of the accused products.

The first was whether the accused products had “plate-like support means” to transmit vertical forces. The defendants asserted that the corresponding features of the accused products did not operate to transmit vertical forces as claimed, but the court was not convinced by these arguments.

The second was that whereas the claim recites a “retaining member ... formed by an L-shaped metal strip”, the accused products formed the strip from plastic.

There was apparently no dispute that infringement by equivalents could be considered in provisional proceedings, although such an assumption might be questionable in future.

Moreover, no other division of the UPC having articulated any test for equivalents, the LD The Hague applied the test that it set out in *Plant-e v. Arkyne*[2], namely:

- 1) Technical equivalence: does the variation solve (essentially) the same problem that the patented invention solves and perform (essentially) the same function in this context?
- 2) Fair protection for the patentee: Is extending the protection of the claim to the equivalent proportionate to a fair protection for the patentee?
- 3) Reasonable legal certainty for third parties: does the skilled person understand from the patent that the scope of the invention is broader than what is claimed literally?
- 4) Is the allegedly infringing product novel and inventive over the prior art

Most of the discussion focused on the first question. The defendants argued that the plastic strip is softer than a metal strip, and showed that it offers less resistance to torsion. But the court considered this irrelevant, because in position in the cabinet the strip is not subject to torsion, but to horizontal forces. Moreover, in their Objection, the defendants had admitted “it is not disputed that the L-shaped strip of feature 1.9,1 on the one hand and the plastic strips of Respekta Clara and Laundreezy are intended to solve the same problem (preventing falling of the machine)” (but had then stressed “they do not solve the problem with the same efficiency”).

The court considered that the requirements of the second and third questions were met, as third parties reading the patent would understand that it is not important that the retaining member is made of metal: what matters is that the used material is strong enough to prevent a washing machine from falling off, and this can also be achieved with (sturdy) plastic. It would be unfair to the patentee if third parties could circumvent the patent by simply using a non-metal strip.

In relation to the fourth question, defendants had referred only to their invalidity arguments. As these had been dismissed, the court considered that the fourth question was satisfied.

The court considered that the requirements of temporal urgency were met as the applicants had acted without delay and very swiftly after the patent was granted.

The court also considered that the balance of interests favoured the applicants, as they would face irreparable harm in the form of price erosion and loss of market share, which is the more damaging as these washing machine cabinets are their only product. The defendants on the other hand sold many other furniture items.

Accordingly, the court ordered the defendants to cease and desist from any infringement

of the patent, subject to the applicants depositing a security of €25,000, and recall of products subject to the applicants depositing a security of €75,000.

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[1] <https://www.unifiedpatentcourt.org/en/node/137658>

[2] https://eip.com/global/latest/article/upc_finds_patent_infringed_by_equivalence