

# EIP



## Munich Local Division issues the first decision by default in an infringement proceeding as Defendant does not respond to Statement of Claim

**i-mop GmbH v ARCORA International GmbH (UPC\_CFI\_193/2024)**

**Order dated 11 October 2024 (ORD\_47439/2024) concerning EP 3 760 094 B1**

The patent in suit EP 3 760 094 B1 relates to a floor cleaning device. The attacked embodiment of the Defendant is a hand-operated, motor-driven floor cleaning device equipped with a fresh water tank for scrubbing and vacuuming floors.

The Claimant and Patentee i-mop GmbH filed the Statement of Claim on 25 April 2024, which was served to the Defendant ARCORA International GmbH on 13 May 2024. According to R. 23 RoP, the Defendant had to file the Statement of Defence within three months of service of the Statement of Claim, i.e. on 13 August 2024 in the present case.

After lapse of the three month period for filing the Statement of Defence, the judge rapporteur pointed out by provisional order dated 16 August 2024 the requirements for the issuance of a default decision and stated that, on the basis of the Claimant's Statement of Claim, the Court assumes that the use of claim 1 of the Patent in Suit had been conclusively demonstrated and that no action of the Defendant was apparent which would speak against the issuance of a default decision (Art. 37 (1) UPCA, R. 355 RoP).

As the judge rapporteur had concerns about some of the Claimant's requests, she gave the Claimant the opportunity to comment within 14 days. Finally, the provisional order of 16 August 2024 pointed out that a decision by default could be issued if the Claimant dispelled the court's concerns and the Defendant did not submit a statement after a deadline - yet to be set - for comments.

Since the Claimant subsequently reworded the requests sought and the Defendant still failed to respond within a 10-day comment period set by the court, the Munich Local Division moved forward to examine the requirements for issuing a decision by default.

In its judgment, the Munich Local Division explains that a four-step analysis needs to be performed for issuing a default judgement, whereby the first three conditions concern the admissibility while the fourth one addresses the substantial justification of a decision by default:

1. A decision by default is admissible if, firstly, the Claimant requests the issue of such a decision (Art. 37(1) UPC, R. 355.1 RoP),
2. secondly, the Defendant has failed to perform an act incumbent on him within the time limit provided for by the Rules of Procedure and the Rules of Procedure provide for the issue of a decision by default in this respect (Rule 355.1(a) RoP) or fails to submit a written reply to a document instituting the proceedings (Art. 37(1) UPCA)
3. thirdly, the time limit for replying to the Statement of Claim has expired and it has thus been ensured that the Statement of Claim was served in such a way that the Defendant had sufficient time to defend himself (R. 355.3 RoP), and
4. the issuance of a decision by default is objectively justified if the facts presented by the Claimant justify the asserted claim and the procedural conduct of the Defendant does not preclude the issuance of a decision by default (Rule 355.2 RoP).

Particularly because the Claimant requested a decision by default and the Defendant missed the three month deadline for filing a statement of defence even though the Statement of Claim had been properly served to the Defendant before, the Munich Local Division concluded that conditions (1) to (3) are met.

Moreover, the Munich Local Division found that condition (4) is also met. According to the Claimant's conclusive and undisputed factual submission, the challenged embodiment makes direct use of the technical teaching of the patent in suit.

Due to the direct infringement of claim 1 of the patent in suit, the Munich Local Division granted an injunction against the Defendant and issued further corrective measures due to the patent infringement as granted by the Claimant.

According to R. 356.1 RoP, the Defendant may file an application to set aside that decision within one month of service.