

EIP



No breach of Inspection Order by Respondent who refused access

Centripetal Limited v. Palo Alto Networks, Inc. UPC_CFI_636/2025

Decision of 25 July 2025 (ORD_32958/2025[1])

A recent procedural issue in an infringement case before the Local Division in Mannheim has highlighted the importance of precision when requesting relief.

Background

The present matter concerned an inspection order (also commonly known as a “saisie” order) made in favour of the Claimant-Applicant, Centripetal Limited, as part of infringement proceedings brought against Palo Alto Networks Inc. in the LD Mannheim. Centripetal had requested permission to inspect the alleged infringement at the offices of the Defendant-Respondent, a California based cybersecurity firm with a “branch office” in Munich. The order granting the saisie was made by the Court of First Instance (ORD_32784/2025[2]) following referral back from the Court of Appeal. That order required amongst other things that the Respondent preserve relevant evidence and provide assistance to the Court appointed expert conducting the inspection on behalf of the Applicant.

The Patent in suit (EP 3 821 580) related to network security and so-called “network protection systems” and was in force, following effective withdrawal of the relevant opt-out, in France, Germany, Italy and the Netherlands.

According to the Applicant, the alleged infringement comprised the Respondent’s “Next Generation Firewall”, “Advanced Threat Protection” and “App-ID Cloud Engine” systems,

a full setup of which, along with related technical documentation, necessitated inspection.

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Specifically, the order granting the saisie ordered the Respondent to:

Provide within one month... at the Defendant's premises [i.e., the Munich office]...a full setup of the Form of Infringement and to allow and assist the Court Expert to monitor the real-time operation of the Form of Infringement, and

Provide digital evidence, i.e. server data, configuration files, logs, source code, and operational data related to the Form of Infringement and to disclose any passwords or certificates necessary to monitor the functionality of the Form of Infringement and to access the digital evidence etc.

When the time came for the Applicant to carry out the saisie, it transpired that the Munich office specified in the order was merely a co-working space used by the Respondent at which only a single sales person was present. There was no example of the alleged infringing system or related technical documents on the premises. In fact, these materials were located at the Respondent's US headquarters, and Counsel for the Respondent refused to enable technical means by which these materials might have been accessed, or an example of the alleged infringement monitored remotely.

The Present Matter

The Applicant went back to the Court seeking an order that the Respondent be held in contempt of court for alleged non-compliance with the saisie order.

The Respondent argued in its defence that the Applicant had identified the wrong premises in its original saisie request; an error it could have avoided had it inspected the relevant company register. The premises selected were not a branch office of the Respondent, a California company, but were instead the offices of Palo Alto Networks (Germany) GmbH, a separate legal entity, which only carried out sales and marketing activities.

This is somewhat confusing as the Court of Appeal had previously referred to the Munich premises as a "branch" of Palo Alto Inc., and the saisie order referred to the Munich premises as being both "the Defendant's "German branch office" and "the Defendant's premises". It would appear to be an important distinction in the circumstances between whether a premises is a "branch" of a foreign defendant or simply the office of a separate (albeit possibly related) entity.

Nevertheless, the Court's view in respect of the contempt of court issue was that the Respondent had not acted unlawfully and ultimately ruled to dismiss the application, with

costs payable by the Applicant. In reaching its decision, the following principles emerged.

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- The scope of the inspection described in the order should be “as concrete as possible” in order to ensure that a respondent’s rights are not disproportionately interfered with. This is important as such applications are made ex parte;
- The order for inspection does not oblige a defendant to bring an alleged Form of Infringement and related materials to a different premises so as to allow an adverse party to inspect it;
- The assistance which need be provided extends to things such as “unlocking closed doors or entering a personal password”. In the present case, the sales person on site was not obliged to go above and beyond the scope of their normal duties to facilitate the inspection of materials not at the premises.

These issues may not have been immediately apparent to the Applicant given the wording of the saisie granted as identified above. On its face, that wording could be interpreted as being a categorical obligation attaching to the Respondent as identified in the proceedings (i.e. the US entity) obliging them to do what needed to be done to facilitate the inspection in Germany.

However, the written rules are clearer on this: 199 RoP specifies that orders for inspection (i.e. those made in accordance with Art. 60(3) UPCA) relate to “products, devices, methods, premises or local situations in situ and 192.2(b) RoP requires indication of measures requested “including the exact location of the evidence to be preserved” [Emphasis added].

What is now clear is that the onus is on applicants to specify with total precision the inspection order they are seeking, especially in cases with a cross-border element, and the Court will assume that they have done their homework on this. This seems reasonable since the respondent will be faced with a court order with which it must quickly decide whether to comply, at the risk of being held in contempt. It must therefore be absolutely clear on the face of the order what is actually required.

This will be tricky in some cases as it can not always reasonably be assumed what evidence will be present at a premises prior to inspection. Had the Applicant in the present case specified additionally that the Respondent should be obliged to set up means to provide the evidence in Germany in the event it was not present at the Munich office, the Court may have been reluctant to make such an order. Applicants should carefully check relevant national registers to ensure that the premises they are targeting are in fact connected to the party against which the order is sought.

[1] <https://www.unifiedpatentcourt.org/en/node/136703>

[2] <https://www.unifiedpatentcourt.org/en/node/136635>