

EIP

Related actions filed in different UPC divisions

**biolitec Holding GmbH & Co. KG v Light Guide Optics Germany GmbH, S.I.A.
LIGHTGUIDE International (UPC_CFI_714/2024)**

Order of 12 February 2025 (ORD_68717/2024[1])

On 20 November 2024, the Claimant filed an infringement action against the Defendants at the Munich Local Division. The Defendants argued that the infringement action was inadmissible under Art. 33(2) UPCA and that the case should be heard in the Düsseldorf Local Division where an application for interim measures had previously been filed. In addition, the Defendants argued that service of the infringement action was ineffective as there was no authorisation to accept service of the action pursuant to Rule 271.1(c) RoP, the fact that a representative had been appointed in the interim measures proceedings did not constitute a general authorisation to receive documents.

Decision

Art. 33(2) UPCA states that:

“If an action referred to in Article 32(1)(a), (c), (n), (g) or (h) is pending before a division of the Court of First Instance, any action referred to in Article 32(1)(a), (c), (n), (g) or (h) between the same parties on the same patent may not be brought before any other division.”

The provision aims to prevent multiple local divisions from handling the same case simultaneously.

On 14 August 2024, the Claimant had filed an application for interim measures against the Defendants at the Düsseldorf Local Division. The subject matter concerned the same

patent in suit as the present infringement action. That application was dismissed, and the Claimant appealed the decision. The appeal was pending at the time the present infringement action was filed.

Actions may be pending simultaneously before several divisions of the Court of First Instance (see, for example Rule 76.2 RoP). However, taking account of Rule 346.1RoP, the Court considered a case is not “pending before a division of the Court of First Instance” pursuant to Art. 33(2) UPCA, if it is pending in the appeal.

The Düsseldorf Local Division had not dealt with the action for interim measures since 19 September 2024, so there was nothing to prevent the Munich Local Division from dealing with the infringement action that was filed on 20 November 2024.

As a result, the Court rejected the Defendants’ preliminary objection because on the date on which the infringement action was filed, no action was pending between the parties on the same patent before another division of the Court of First Instance.

As to service, although the Defendants had not provided authorisation to receive the present infringement action electronically pursuant to Rule 271.1(c), they were prepared to accept service of the infringement action on 2 December 2024, the date in which they had access to the case management system. The court therefore ordered that that was the date of service.

Written by Priya Masih

[1] <https://www.unified-patent-court.org/en/node/60484>