

EIP

UPC emphasises importance of formal service

Daedalus Prime v. Xiaomi and others

Order of 18 April 2024 ORD_20986/2024[1]

Daedalus Prime LLC filed a patent infringement action based on EP2792100 at the UPC local division in Hamburg. While some of the named defendants were located in EU countries participating in the UPC (Germany and Netherlands), others were located in China and Taiwan.

The claimant requested that service on the defendants located in China and Taiwan should be effected via service on their respective subsidiaries in Germany.

The Hamburg division held that this is impermissible – the rules on service on defendants outside the territory of the UPC Agreement (Rules 273 and 274 RoP) require at least a first attempt of service in accordance with Rule 274.1 (a) (ii) and (iii) RoP before service by other means can be contemplated.

The Hamburg division agreed with a prior decision from the Mannheim local division (UPC_CFI_223/2023 [2]) that service must first be attempted as specified in Rule 274. For China this would mean service under the Hague Service Convention, while for Taiwan, who is not party to that Convention, service should be attempted through diplomatic or consular channels from the contracting member state in which the sub-registry of the relevant division is established (namely, Germany).

The Court reiterated that formal service on the defendant is an internationally recognised principle and not a superfluous formality. The UPC is bound by international agreements

binding the contracting member states, including the Hague Service Convention, and the UPC cannot seek to circumvent these provisions by permitting service on a defendant outside the jurisdiction through a local office or subsidiary.

The claimant was therefore ordered to submit documents for service, including the necessary translations into Chinese, to the Hamburg Local Division.

[1] <https://www.unified-patent-court.org/en/node/667>

[2] Reported here <https://eipamar.com/en/knowledge-hub/article/service-on-defendants-outside-the-jurisdiction/>