

EIP

Unconventional Service: igus v. Whale Technology

UPC_CFI_318/2025, decision of 5 August 2025 (ORD_34299/2025)[1]

In a default judgment issued by the Düsseldorf Local Division of the Unified Patent Court, Whale Technology (Shanghai) Co., Ltd. was found to have infringed European Patent EP3912243, held by igus GmbH.

Interestingly, service of the statement of claim was carried out on the same day that the action was filed with the UPC via hand delivery to an employee of Whale Technology by a bailiff at a trade fair.

Allowing service of the statement of claim at a trade fair is consistent with an earlier decision from the Düsseldorf LD, which established the principle that a trade fair stand where deliveries are advertised may be considered to be a temporary place of business within the UPC member states of a company domiciled outside the UPC member states[2]. However, in the time since that earlier decision, the UPC Court of Appeal has stated, albeit in a slightly different context, that the rules relied upon by the Düsseldorf LD to justify the principle that a trade fair stand may be considered a temporary place of business do not apply to companies domiciled outside the UPC member states[3].

Furthermore, the UPC Rules of Procedure state that service of the statement of claim is carried out by the UPC Registry[4], but given that the statement of claim was done on the same day as it was filed with the UPC, it seems safe to assume that the bailiff was arranged by the claimant itself.

Service in this manner at trade fairs is standard practice in many national jurisdictions, including in Germany, but it is not clear from the present decision why the Düsseldorf LD considered that the location or method of service used in this case was appropriate in the context of the UPC Rules of Procedure. As the UPC Court of Appeal has stated “The UPC has its own service provisions... National laws of a Contracting Member State do not take primacy. There is no reason why the UPC should follow the practice of some

German courts... since the UPC has its own procedural rules and furthermore the practice of some German courts does not create a precedent”[5].

Whale Technology failed to respond to the statement of claim within the prescribed three-month period beginning on the date of the service. As a result, after considering the facts put forward by igus to justify the remedies sought, the Düsseldorf LD gave a decision by default.

The decision highlights the balance of the claimant’s interest in obtaining a final decision in a reasonable timeframe with the defendant’s interest in having sufficient notice and time to enter a defence to the claim. Indeed, the rules on service of documents are in place to ensure that the court can ensure that the defendant’s rights to present a defence have been respected before delivering a default judgement.

It is unlikely that this decision will be appealed, so it may be some time until the Court of Appeal weighs in on this line of case law being established by the Düsseldorf LD. Until then, the Düsseldorf LD may remain an attractive forum for claimants who are interested in unconventional means of service.

[1] <https://www.unifiedpatentcourt.org/en/node/136896>

[2] <https://www.unifiedpatentcourt.org/en/node/854>, M-A-S Maschinen- un Anlagenbau Schulz GmbH, UPC_CFI_316/2024, ORD_36068/2024 of 17 June 2024, see Reasons for the order: “[A temporary place of business may be] a trade fair stand if – as is usually the case – at least deliveries are also advertised there”.

[3] <https://www.unifiedpatentcourt.org/en/node/988>, Panasonic v. Xioami, UPC_CoA_86/2024, order dated 5 August 2024, see para. 40: “R.271.5(a) RoP does not apply to [companies with registered offices outside the Contracting Member States and outside the EU]”.

[4] For service within the UPC member states, Rule 271.4: “the Registry shall serve the Statement of claim on the defendant”, and outside the UPC member states Rule 274.1: “it shall be so served by the Registry”.

[5] <https://www.unifiedpatentcourt.org/en/node/960>, NEC v. TCL, UPC_CoA_69/2024, order of 29 July 2024. See paragraph 38.