

UPC Considers but does not decide exhaustion of rights in relation to consumables

Brita v. Aquashield

UPC CFI 248/2024 (Munich LD), decision of 22 August 2025[1]

UPC CFI 564/2024 (Munich LD), decision of 16 October 2025[2]

Brita sued Aquashield and others for infringement of EP2387547, which Brita says protects its replaceable water filters (case ref. UPC CFI 248/2024). Aquashield responded with a counterclaim for revocation (case ref. UPC CFI 564/2024).

Aquashield distributes Philips-branded filters that are compatible with Brita's filter system, though they function in a different manner to Brita's own cartridges.

Indirect infringement and exhaustion

The decision of 22 August 2025 in the combined infringement action and counterclaim for revocation includes some interesting discussion in the context of indirect infringement. In particular, discussion of who is a "party entitled to exploit the patented invention" based on exhaustion of rights from sale of a system including consumable parts.

Following the assessment of validity, the surviving independent claim covered a complete filter system, i.e. the combination of a water jug and a filter. Since the defendants supply only the filter, the question of infringement shifted to one of indirect infringement.

One of the criteria for indirect infringement is that the defendant is supplying (or offering to supply) any person other than "a party that is entitled to exploit the patented invention"

with means for putting the patented invention into effect[3].

p2

The defendants argued that Brita's authorised sale of the original filter systems exhausted any rights conferred by the patent[4], and that end-users of the defendants' filters are therefore "a party entitled to exploit the invention".

In the decision, the court provides comments on when rights may or may not be exhausted in the context of replacing a consumable part. In particular, the court noted that while proper use of a patent-protected product also includes the normal maintenance and repair, it does not include any measures that result in the reproduction of a product covered by a patent. The question is whether this replacement is permissible use in accordance with the intended purpose of the product, or whether it constitutes an impermissible new manufacture of the product. For consumable parts, replacement is a normal maintenance measure and will generally be a permissible use of the patent-protected product placed on the market unless the invention lies in the replaced part.

Unfortunately, the court did not have to decide the exhaustion issue based on these principles, because the patent as amended does not cover the filter sold by Brita, so Brita had never placed the product on the market in the first place.

Withdrawal of the counterclaim after decision issued

In the end, the court found in Brita's favour, but it may have been a Pyrrhic victory. Brita's patent was limited in a way that the UPC has explicitly stated does not cover Brita's own filter cartridges, potentially leaving the door open for third party direct copies.

The decision of 16 October 2025 was issued after Aquashield applied to withdraw the counterclaim for revocation. The court held that withdrawal after a decision has been issued is permissible within the appeal period, even if an appeal is not filed. The result is that the decision of 22 August is ineffective in so far as it limits Brita's patent, leaving a weakened but still effective moat in place around its filter cartridges.

Withdrawal of the counterclaim suggests that the parties reached a settlement following the decision of 22 August. Perhaps Brita did not have the appetite for an appeal, mirroring the ancient king of Epirus in believing that one more victory over Aquashield could ruin

[1] <https://www.unifiedpatentcourt.org/en/node/137240>

[2] <https://www.unifiedpatentcourt.org/en/node/159547>

[3] Article 26 UPCA.

[4] Article 29 UPCA.