

**EIP**

# UPC Court of Appeal Clarifies Jurisdiction on indirect infringement

**Aylo Premium Ltd, Aylo Billing Limited and Aylo Freesites Ltd v Dish Technologies and Sling TV UPC\_CoA\_188/2024**

**Order of 3 September 2024 ORD\_42716/2024[1]**

Dish is the proprietor of EP 2479680 and Sling its exclusive licensee. The patent relates to media streaming, and in particular a method for presenting rate adaptive streams. The patent was asserted at the Mannheim local division against the Aylo companies, who are based in Cyprus and Ireland. Indirect infringement was alleged, and the competence of the UPC and the Mannheim local division was stated to be under Art. 33(1)(a) UPCA (place of actual or threatened infringement). The infringement alleged was by offering video files and media players via the internet within the UPC territory (including Germany), and these were stated to be means that relate to an essential element of the invention of the patent in suit (and hence indirect infringement under Art. 26 UPCA).

Aylo challenged the competence of the UPC and the Mannheim local division in a preliminary objection under Rule 19 RoP, but this was rejected. Aylo appealed.

Article 7(2) of Regulation 1215/2012 gives jurisdiction to “the courts for the place where the harmful event occurred or may occur”. The Court of Appeal noted that this covers both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the applicant, in the courts for either of those places. The damage can occur only in a jurisdiction where the right whose infringement is alleged is registered. In principle, the courts in the jurisdiction where the right is registered are best placed to ascertain whether the right has been infringed.

Aylo argued that jurisdiction required the claimant to present “conclusive argumentation” for the alleged indirect patent infringement in the UPC territory, and in particular the double territoriality requirement (that the essential means are both supplied within the territory and are suitable and intended for putting the invention into effect within the territory). The Court of Appeal disagreed, holding that conclusive argumentation was required to grant the relief sought in an action, but is not required for the establishment of jurisdiction. Dish and Sling had submitted that the media players and video files are offered and supplied to users of Aylo’s websites in, inter alia, Germany, and are suitable and intended to put the claimed invention into effect on the end-user stations. This was sufficient to establish jurisdiction – whether the submissions are based on a correct interpretation of the claims of the patent at issue and whether end-user stations actually carry out the claimed method were matters to be determined in the examination of the merits of the case.

Aylo also objected that Dish and Sling had not submitted that Aylo’s websites are “directed at” users within the UPC territory. This argument was rejected as inadmissibly raised for the first time on appeal. But the Court of Appeal also stated that the argument should be rejected on its merits – damage within the sense of Article 7(2) of Regulation 1215/2012 that is allegedly caused via a website does not require that the website be directed at users in the territory. The likelihood of such damage may arise from the possibility of obtaining products and/or using services from an internet site accessible within the territory – no further requirement is to be met for the purpose of establishing jurisdiction. In particular it was not necessary, as urged by Aylo, for it to be alleged that the servers are located within the territory.

Accordingly, the Court of Appeal held that the Mannheim local division rightly held that the UPC had jurisdiction in this case pursuant to Art. 7(2) of Regulation 1215/2012, and that the Mannheim local division had jurisdiction for analogous reasons. The Court of Appeal considered the EU law clear, and rejected a suggestion from Aylo for a reference to the CJEU.

Aylo further argued that the UPC should decline jurisdiction because Dish and Sling had brought an action at the Munich Regional Court one day before the UPC action based on the same acts and a patent in the same family as that asserted at the UPC. The Court of Appeal noted that Art. 30(2) of Regulation 1215/2012 granted the court discretion as to whether to decline jurisdiction in related actions, and the Mannheim local division had not exercised its discretion wrongly.

Aylo additionally argued that a preliminary objection could be made on the basis of abuse and manifest lack of foundation, notwithstanding that these are not included in Rule 19

RoP. The Court of Appeal held that the Rule 19 list is exhaustive, and that preliminary objections cannot be raised on other “unwritten” grounds. This does not prevent the court from using its general case management powers to identify such an issue at an early stage and deal with it at an early stage of the proceedings if this is warranted.

Accordingly Aylo’s appeal was rejected as unfounded. The reasoning seems entirely conventional, and in particular litigation would be unworkable if it were necessary to prove conclusively that alleged acts have taken place in the manner that the claimant asserts in order for the jurisdiction of the court to be established.

[1] <https://www.unified-patent-court.org/en/node/1054>