



Procedural order
of the Court of First Instance of the Unified Patent Court Local Division
Düsseldorf
issued on November 22, 2023
concerning EP 2 546 134 B1

Guiding principles:

1. Even if the panel is to decide on the procedure under Art. 33(3) UPCA by order as soon as possible after the conclusion of the written procedure in accordance with R. 37.1 RoP, it may take an earlier decision in accordance with R. 37.2 RoP if it takes into account the parties' submissions and grants them the right to be heard.
2. The joint hearing of infringement and nullity counterclaims can make sense for reasons of efficiency alone. It is also advantageous in terms of content, as it allows a decision to be made on both the legal status and the infringement issue on the basis of a uniform interpretation by the same panel of judges in the same composition. This applies all the more if the complexity of the technology in dispute is rather moderate in the known spectrum of patent disputes and the number of validity attacks is also manageable.

Keywords:

Application of Article 33(3) UPCA; discretion to proceed with infringement proceedings; assignment of a technically qualified judge

Plaintiff:

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represented by: Klaus Haft, lawyer, Hoyng ROKH Monegier, Steinstraße 20, 40212 Düsseldorf,

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Defendant:

1. Revolt Zycling AG, Allmendstrasse 15, 8320 Fehraltdorf, Switzerland,

represented by: Attorney Dr. Jan Phillip Rektorschek, law firm Taylor Wessing PartG mbB, Isartorplatz 8, 80331 Munich,

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with the assistance of: European and Swiss patent attorney Dr. Theodore Choi,
Law firm Schaad Balass Menzl & Partner AG, Bellerivestrasse 20,
8034 Zurich, Switzerland,

2. George Merachtsakis, c/o Revolt Zycling AG, Allmendstrasse 15, 8320 Fehraltdorf,

Switzerland, represented by: Attorney Dr. Jan Phillip Rektorschek, law firm Taylor Wessing
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PATENT IN SUIT:

European Patent No. EP 2 546 134 B1

ADJUDICATING BODY/CHAMBER:

Judges of the Local Chamber Düsseldorf

Co-Judges:

This order was issued by the presiding judge Thomas as rapporteur, the legally qualified judge Dr. Thom and the legally qualified judge Kupecz.

LANGUAGE OF PROCEDURE: German

SUBJECT: Rule 37.2 RP in conjunction with Art. 33 para. 3 UPCA

REASONS FOR THE ORDER:

Since the parties did not raise any objections to such a procedure, the question of how to proceed with regard to Art. 33 para. 3 UPCA could already be decided before the conclusion of the written procedure and answered in the sense of a procedure according to Art. 33 para. 3 lit. a) UPCA.

Even if the panel is to decide by order on the procedure under Article 33(3) UPCA as soon as possible after the conclusion of the written procedure in accordance with R. 37.1 RP, it may take an earlier decision in accordance with R. 37.2 RP if it takes into account the parties' submissions and grants them the right to be heard. In the present case, such an early decision is justified and necessary due to the current situation of the court, which is in its infancy. As parts of the panel are currently only employed on a part-time or case-by-case basis, it seems appropriate for reasons of procedural economy to obtain the assignment of the technical judge at an early stage in order to be able to schedule him or her as early as possible.

Otherwise, there would be a considerable risk of delay if the technical judge is only called in during the interim proceedings and is already prevented from attending elsewhere.

The local division exercises its discretion to hear both the infringement action and the counterclaim for a declaration of invalidity (Art. 33 (3) (a) UPCA). Such a joint hearing of infringement and nullity counterclaims appears to make sense for reasons of efficiency alone. It is also advantageous in terms of content, as it allows a decision to be made on both the legal status and the question of infringement on the basis of a uniform interpretation by the same panel of judges in the same composition. Such a uniform approach is all the more justified if the complexity of the technology in dispute - as here - is rather moderate in the known spectrum of patent disputes and the number of attacks on the legal validity is also manageable.

ARRANGEMENT:

For these reasons, the Düsseldorf Local Court, after hearing the parties, orders that it will hear both the infringement action and the counterclaim for a declaration of nullity.

Instructions to the rapporteur:

The Judge-Rapporteur shall request the President of the Court of First Instance to assign a technically qualified judge to the panel.

Issued in Düsseldorf on November 22, 2023

NAMES AND SIGNATURES

Presiding Judge Thomas

Legally qualified judge Dr. Thom

Legally qualified judge Kupecz

DETAILS OF THE ARRANGEMENT:

ORD_586970/2023 for the main file reference

ACT_552758/2023 UPC number: UPC_CFI_260/2023

Type of proceedings: Action for infringement and action for annulment