



Paris Local Division

UPC_CFI_495/2023
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on *11/04/2024*

Headnotes: In the case of multiple defendants, if one of the defendants has its residence within the territory of the Local Division seized, Article 33(1)(b) UPCA must be applied, regardless of whether the other defendants are based inside or outside the Contracting Member States or inside or outside the EU. Hence the only requirements to be met are: 1) the multiple defendants have a commercial relationship, 2) the action relates to the same alleged infringement.

The requirement of a “commercial relationship” implies a “certain quality and intensity”. However, to avoid multiple actions and the risk of irreconcilable decisions from separate proceedings, and to comply with the main principle of efficiency within the UPC, the interpretation of the link between the defendants should not be too narrow. The fact of belonging to the same group (legal entities) and having related commercial activities aimed at the same purpose (such as R&D, manufacturing, sale and distribution of the same products) is sufficient to be considered as “a commercial relationship” within the meaning of the Article 33(1)(b) UPCA.

Keynotes: Preliminary Objection, Multiple defendants, Article 33(1)(b) UPCA, Interpretation of the meaning of “a commercial relationship”.

APPLICANTS

Represented by Christoph Crützen

ARM Limited (Defendant No. 1 in the main proceedings)

110 Fulbourn Road
CB1 9NJ - Cambridge – GB

Allinea Software GmbH (Defendant No. 2 in the main proceedings)

c/o Grant Thornton GmbH, Ganghoferstrasse 31
80339 – München – DE

Apical Limited (Defendant No. 3 in the main proceedings)

110 Fulbourn Road
CB1 9NJ - Cambridge - GB

Arm France SAS (Defendant No. 4 in the main proceedings)

Batiment B - 732 Avenue de Roumanille
06410 - Biot - FR

Arm Germany GmbH (Defendant No. 5 in the main proceedings)

Bretonischer Ring 16
85630 - Grasbrunn - DE

Arm Germany d.o.o (Defendant No. 6 in the main proceedings)
Obrtna Cesta 18
SL-8310 - Sentjernej - SI

Arm Ireland Limited (Defendant No. 7 in the main proceedings)
Lyrr Building, 3, Mervue Business Park Galway
Co. Galway - Galway - IE

Arm Poland Sp. z.o.o (Defendant No. 8 in the main proceedings)
UL. ŻELAZNA 2
40-851 - KATOWICE, ŚLĄSKIE - PL

Arm Sweden AB (Defendant No. 9 in the main proceedings)
Emdalavagen 6
SE-223 69 - Lund - SE

Simulity Labs Limited (Defendant No. 10 in the main proceedings)
110 Fulbourn Road
CB1 9NJ - Cambridge - GB

SVF Holdco Limited (Defendant No. 12 in the main proceedings)
69 Grosvenor Street
W1K 3JP - London – GB

RESPONDENT

Represented by Lionel Martin

ICPillar LLC (Claimant in the main proceedings, hereinafter Respondent, Claimant or ICPillar)

4265 San Felipe Street, Suite 1100
77027 - Houston, Texas – US

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor</i>
EP3000239	ICPillar

DECIDING JUDGES:

COMPOSITION OF PANEL – FULL PANEL (in accordance with Rule 102.1 RoP)

Presiding judge and Judge-rapporteur	Camille Lignieres
Legally qualified judge	Carine Gillet
Legally qualified judge	Petri Rininen

LANGUAGE OF PROCEEDINGS: English

ORDER

Summary of facts and procedure

On 22 December 2023, ICPillar brought an infringement action, related to EP 3 000 239, before the Paris Local Division against 12 defendants.

On 26 February 2024, Defendants Nos. 2, 5, 6, 7 and 9, respectively namely Allinea Software GmbH, Arm Germany GmbH, Arm Germany d.o.o., Arm Ireland Ltd and Arm Sweden filed a preliminary objection, challenging the jurisdiction of the UPC Local Division of Paris, on the grounds that there is no explanation as to why this Local Division has jurisdiction for all Defendants, regardless of their place of establishment, and their lack of commercial relationship with defendant No. 4 (Arm France SAS).

On 6 March 2024, Defendants Nos. 1, 3, 8 and 10, namely respectively Arm Limited, Apical Limited, Arm Poland Sp. z.o.o and Simulity Labs Limited, lodged a preliminary objection, challenging the jurisdiction of the Paris Local Division.

On 7 March 2024, Defendant No. 12 (SVF Holdco Limited) lodged a preliminary objection, challenging the jurisdiction of the Paris Local Division.

In accordance with Rule 19.5 RoP, the Registry notified the first preliminary objection to the Claimant on 27 February 2024, and for the two last preliminary objections on 7 March 2024.

On 12 and 21 March 2024, ICPillar, the Respondent in the present applications, submitted written observations in which it asked the Court to reject the preliminary objections and to take into account its costs relating to those preliminary objections in the course of the proceedings on the substance.

Parties' arguments

The applicants seek that the Court rules that Paris Local Division is not territorially competent, arguing:

- as regards the Defendant No. 7:

Defendant No. 7 is domiciled outside the territory of the UPC (Ireland is not a contracting member state) and therefore Article 33(1) §3 UPCA (defendants domiciled in third countries) must be applied to this defendant. As such, a commercial relationship with the French entity is not relevant.

- as regards the Defendants Nos. 2, 5, 6 and 9 (based in the territory of the Contracting Member States (CMS)):

The Claimant does not explain in the Statement of Claim how they infringe the patent in France, but only makes general assumptions, and the requirement of a "commercial relationship" between these defendants, which implies a certain quality and intensity, is not proven.

- as regards the Defendants Nos. 1, 3, 8 and 10, all based outside CMS territory and outside the EU except for Defendant No. 8 (Poland):

Article 33(1) § 3 UPCA must be applied, consequently a commercial relationship with the French company is not relevant.

-as regards the Defendant No. 12, the applicants argue that SVF Holdco is not part of the Arm group, the current relationship is limited to owning one share with a nominal value of 0.001 GBP in Arm Holdings plc (formerly Arm Holdings Limited), thus the Claimant has failed to explain why the LD Paris has jurisdiction over Defendant No. 12 as it is required under Rule 13(1)(i) RoP.

ICPillar responds that:

- The Paris Local Division has jurisdiction over Arm France SAS (Defendant No. 4) as it is domiciled in France.

- The Paris Local Division has jurisdiction over Arm Germany GmbH (Defendant No. 5), Arm Germany d.o.o. (Defendant No. 6), Arm Sweden AB (Defendant No. 9), in accordance with the internal rules of jurisdiction of the UPCA, due to their commercial relationship with Arm France SAS (Defendant No. 4) and the same acts of infringement.

- The Paris Local Division has international jurisdiction over Arm Ireland Limited (Defendant No. 7), as co-defendant with Arm France SAS (Defendant No. 4), in accordance with Article 8 of the Brussels Regulation, since the same infringement is at issue, which are grounds for irreconcilable

judgments. The Court also has jurisdiction under the internal rules of jurisdiction of the UPCA in respect of the commercial relationship between Arm France and the Irish company and the same infringement.

- The Respondent developed the same argument relating to the Polish and Irish companies (Defendant No. 8 and Defendant No. 7) and points out the fact that the website arm.com, where the accused products are advertised and marketed also relating to Ireland and Poland, is accessible from France and the jurisdiction of the Paris Local Division will allow to avoid the risk of irreconcilable judgments.

- Finally, Paris Local Division has international jurisdiction over the defendants domiciled in the United Kingdom (Defendants Nos. 1, 3, 10, 12) by applying the amended Article 71b (2) of the Brussels 1 bis Regulation, which adapts Articles 7 (2) and 8 (1) of the same Regulation in order to remove the condition of domicile within the EU, applying the same reasoning as above, taking into account the previous involvement in the Arm group of SVF Holdco (Defendant No. 12), which is still liable for the past damages that are not time-barred. Paris Local Division has also the internal jurisdiction within the UPC as Article 33(1)(b) UPCA should be applied instead of the Article 33(1) § 3 UPCA as argued by the Defendants.

Preliminary procedural points:

As a preliminary point, the Court notes that the requests for preliminary objections were raised within the time limit set out in Rule 19(1) RoP.

It should also be noted that Defendant No. 2 (Allinea Software GmbH) and Defendant No. 11 (Hyperglance Ltd) were the subject of decisions to withdraw the action upon the request of the Claimant in the main proceedings by orders issued on 28/02/2024 (UPC-CFI 495/2023 – App 9933) and on 22/03/2024 (UPC_CFI 495/2023- App 1343).

Legal grounds of the Preliminary Objection in the present case:

Article 33(1)(b) UPCA on Competence of the divisions of the Court of First Instance states that:

“(1) Without prejudice to paragraph 7 of this Article, actions referred to in Article 32(1)(a), (c), (f) and (g) shall be brought before: (...)

(b) the local division hosted by the Contracting Member State where the defendant or, in the case of multiple defendants, one of the defendants has its residence, or principal place of business, or in the absence of residence or principal place of business, its place of business, or the regional division in which that Contracting Member State participates. An action may be brought against multiple defendants only where the defendants have a commercial relationship and where the action relates to the same alleged infringement.”

The international jurisdiction of the UPC under Article 31 UPCA is not the basis of the preliminary objection raised by the Arm entities. It is only the internal jurisdiction which is challenged on the basis of Rule 19(1)(b) RoP, and not based on Rule 19(1)(a).

Defendants challenged the jurisdiction of the Paris Local Division, arguing that in the SoC, the Claimant makes a general reference to Article 33.1 UPCA, without even indicating whether

jurisdiction was based on the existence of infringements in France or on the commercial relationship between the defendants.

Therefore, the present preliminary objection is only based on the internal jurisdiction within the UPC, which is governed by Article 33 UPCA.

In the present case, one of the defendants has its domicile in France (Arm France SAS) and the other defendants have their respective seat outside France, some in Contracting Member States (CMS), some in the European Union (EU) but outside CMS and others outside the EU.

We are in a situation foreseen by Article 33(1)(b) UPCA, that is to say a case of multiple defendants, and one of the defendants has its residence in France (Arm France SAS), regardless of whether the other defendants are based inside or outside the CMS or inside or outside the EU.

Hence the only requirements to be met are:

- 1) the multiple defendants have a commercial relationship and
- 2) the action relates to the same alleged infringement.

First requirement:

The meaning of "commercial relationship" requires interpretation by the Court. The applicants rightly noted that the requirement of a "commercial relationship" implies a "certain quality and intensity". However, to avoid multiple actions regarding the same infringement and the risk of irreconcilable decisions from such separate proceedings, and to comply with the main principle of efficiency within the UPC, the interpretation of the link between the defendants should not be too narrow.

The fact of belonging to the same group (of legal entities) and having related commercial activities aimed at the same purpose (such as R&D, manufacturing, sale and distribution of the same products) is sufficient to be considered as "a commercial relationship" within the meaning of the Article 33(1)(b). The Court notes that such an approach has already been adopted by another local division of the UPC in a similar case, as follows:

"In the context of Art. 33.1(b) UPCA, the question is then whether the matter relates to the same alleged infringement (...) This is because the latter is in a permanent business relationship with Defendant 1) with regard to the infringing objects and the same alleged infringement is involved, namely the infringement of the patent at issue. Defendant 1) is a wholly-owned subsidiary of Defendant 2). Defendant 1) acts as the "European Headquarters" of the group of companies and is supplied by Defendant 2) with the contested embodiments." (UPC_CFI_15/2023 (LD Munich) Order of 29/09/2023).

In the present case, ARM Limited (Defendant No. 1), the parent company, is the administrator of the "arm.com" website and is identified in the legal notice as the copyright holder for itself and its affiliates, all of whom are involved in the promotion of the allegedly infringing products accessible from France (Exhibit P1).

It is justified by the ARM Limited annual report (Exhibit X05) that all the companies (except SVF Holdco) mentioned as defendants are as at 31 March 2022 members of the same Arm World Group and they are all 100% owned subsidiaries of ARM Limited.

SVF Holdco (Defendant No. 12) is no longer part of the Arm Group. However, the Court notes, based on evidence provided by Arm entities (Exhibit MB C1) that Defendant No 12 has been part of the Arm group (100%) until 2018 and has retained 25% of the shares in Arm Limited until August 2023. Moreover, the allegedly infringing products, Socrates products, had already been developed by Arm Group in 2018 ("Arm Socrates" Version 1.5, user guide, Copyrights 2018-2022-Arm Limited or its affiliates" in Exhibit C01). As the Claimant rightly argued, the UPC has jurisdiction over the infringement acts that began before 1 June 2023 and continued after this date and that are not covered by the period of limitations. This applies on the basis of Articles 3(c), 32(1)(a) and 72 UPCA.

All the evidence tends to show that the whole Arm group has a commercial activity dedicated to the Socrates products.

The link between all the defendants is therefore sufficient to establish the existence of a commercial relationship of a certain quality and intensity.

Hence, the first requirement is met.

Second requirement:

In its Statement of Claim, ICPillar seeks a declaration of infringement against the defendants related to making, offering, placing on the market, using or importing or storing for those purposes, in the territory of the Designated Contracting States in which the patent EP3000239 has effect at the time of the oral hearing, a product made in accordance with claims of the patent at issue, in particular, inter alia, ARM Socrates Development Environment ("DE") solution and ARM Development Studio ("DS") solution, according to Articles 63(1) and 25(a) of the UPCA.

It is not contested that the Arm website (arm.com), which is accessible and visible in France, presents the allegedly infringing products "Arm Socrates" and "Arm DS" (Exhibit P1a - extract from the Arm website Contact US Arm Flexible Access Enquiry), with an offer to buy online the Arm Products.

This website refers on a page entitled "Arm global offices" (Exhibit P2) to the "Contacts for sales and supports" in Great Britain (address of the headquarters in Cambridge, seats of the Defendants Nos. 1, 3, 10), in Germany (with an address corresponding to the seat of Defendant No. 5), in France (with the address in Biot (04) which is the seat of Arm France), in Ireland (with the address of the contact which is the seat of Defendant No. 7), in Slovenia (with the address at the seat of Defendant No. 6), and in Sweden (address of the seat of Defendant No. 9).

Concerning Poland, although the Polish defendant (Defendant No. 8) is not mentioned as a contact for sale and support, it is an affiliate company 100% held by Arm Limited, the parent company of the group, and the Polish company is in charge in the EU of "research and development of RISC-based microprocessors IP" (Exhibit X5).

The lack of proof of the reality of the infringement alleged by the defendants and the involvement of each of the defendants in the acts of infringement will be examined in the course of the main

proceedings. At this stage of the proceedings and as regards the question of jurisdiction, the applicant has sufficiently demonstrated that its claim concerns the same alleged acts of infringement against all the defendants in the present case.

This means that the Claimant has demonstrated that one of the defendants is domiciled in France, that all the defendants have a commercial relationship and that the action relates to the same alleged infringement. The internal jurisdiction of the Paris Local Division under Article 33(1)(b) UPCA is justified and the preliminary objections shall be dismissed.

ORDER

For these grounds, the Court rejects the preliminary objections.

The costs will be taken into account in the main proceedings.

An appeal may be brought against the present order within 15 calendar days of its notification to the unsuccessful party pursuant to Art. 73(2)(a) UPCA and Rule 220.2 RoP.

INSTRUCTIONS TO THE PARTIES AND TO THE REGISTRY (Rule 20(1), 3rd sentence RoP) concerning the next steps in the proceedings:

- the time period for lodging the Statement of defense shall not be affected by the present order,
- a case management meeting will be set as soon as possible by the judge-rapporteur in order to align the dates of service of the Statement of claim in the present case.

Delivered in Paris, on 11 April 2024.

C. Lignieres, Presiding judge and Judge-rapporteur

C. Gillet, Legally qualified judge

P. Rinkinen, Legally qualified judge

ORDER DETAILS

Order no. ORD_18817/2024 in ACTION NUMBER: ACT_596432/2023

UPC number: UPC_CFI_495/2023

Action type: Infringement Action

Related proceeding no.: Application no. 9725/2024, Application no. 12326/2024 and Application no. 12563/2024

Application Type: Preliminary objection