



Düsseldorf Local Division
UPC_CFI_373/2023

Order
of the Court of First Instance of the Unified Patent Court
Local Division in Düsseldorf
issued on 5 August 2024
concerning EP 1793917

HEADNOTES:

The mere alleged conduct of failing to comply with a future cost decision does not justify the provision of security for costs.

CLAIMANT:

SodaStream Industries Ltd., 1 Atir Yeda Street, Kfar Saba 4464301, Israel

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DEFENDANT:

Aarke AB, Östgötagatan - 100, 11664 Stockholm, Sweden

Represented by: Advokaterna Jens Olsson, Magnus Dahlman and Emelie
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PATENT AT ISSUE:

European patent n° 1793917

PANEL/DIVISION:

Panel of the Local Division in Düsseldorf

DECIDING JUDGES:

This Order was made by Dr Thom acting as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT OF THE PROCEEDINGS:

Patent infringement action – R. 158 RoP Security of costs

SUBMISSIONS OF THE PARTIES:

The defendant seeks an adequate security for the costs of the proceedings and other costs incurred and to be incurred by the Defendant within a time limit to be set by the Local Division Düsseldorf. It suggests an amount of EUR 400,000 orientated at the decision on scale of ceilings for recoverable costs (24/04/2023; D- AC/10/24042023_E).

The defendant argues that the claimant is incorporated in Israel. In the absence of international treaties, it sees the risk of an additional procedural burden and uncertainty regarding the enforcement of an UPC decision on costs. Although there is no doubt that the claimant is solvent enough, the defendant doubts its willingness to comply with such a decision. The defendant

alleges that the claimant only initiates infringement proceedings in order to cause material harm. Therefore, defendant believes that the claimant is likely to use all measures available in order not to comply with a cost decision in order to pursue to cause additional cost resources.

The claimant asks to reject the defendant's request.

The claimant argues, that the defendant did not present convincing facts and arguments in support of its position in the light of the already existing UPC case law. Exceptional difficulties in the enforcement of judgements in Israel have not been demonstrated. Art. 17 of the Hague Convention on Civil Procedure (concluded 1 March 1954), to which Germany, Sweden and Israel are contracting states, expresses a mutual understanding that court proceedings in the contracting states are efficient. There is neither evidence that the claimant has evaded enforcement of foreign judgements in its own jurisdiction nor that the claimant would not comply with the judgement of the Court and that the decisions and orders will not be enforceable. The legal enforcement of its intellectual property rights does not show abusive behaviour of the claimant. Furthermore, the claimant is not in financial difficulties, but is financially strong. It is part of the PepsiCo group, which has significant assets within the member states of the UPCA.

GROUNDS OF THE ORDER:

No grounds for the provision of security for legal costs have been brought before the Court.

1.

In line with the already developed UPC case law in this regard the Court agrees with the following established criteria to be considered in case of ordering a security for costs of the proceedings (Art. 158 (1) RoP):

The Court has the discretion to order a security for legal costs and other expenses. Factors to be considered when ordering a security order include the financial position of the other party that may give rise to a legitimate and real concern that a possible cost order might not be recoverable and/or the likelihood that a possible cost order by the UPC may not, or in an unduly burdensome way, be enforceable. Imposing a security for legal costs serves to protect the position and (potential) rights of the Defendant (see LD Munich, UPC_CFI_15/2023, Order delivered on 29 September 2023; CD Munich, UPC_CFI_252/2023, Order delivered on 30 October 2023; LD Paris, UPC_495/2023, Order delivered on 21 May 2024).

2.

Under these principles, neither a financial risk nor a likelihood of unenforceability is presented to the Court.

a)

It is not disputed by the parties that the claimant, as part of the PepsiCo group, is financially able to comply with a decision on costs.

b)

Even if the Hague Convention on Civil Procedure, concluded on 1 March 1954, cannot be considered as an international treaty recognising the enforceability of UPC judgements in Israel, no additional procedural burden and uncertainty for the defendant can be seen here. The mere

fact that the claimant's registered office is located in Israel does not justify an order for security of costs. The defendant's sole argument that it had doubts as to the claimant's compliance with a decision could not be substantiated by facts. The Court does not understand the allegation that infringement proceedings appear to be a tool for the claimant to cause material harm to the defendant. The legal enforcement of intellectual property rights by the owner is not per se abusive. The defendant does not put forward any other additional facts of abusive behaviour in the context of its request. In particular, it does not present any facts or evidence that the claimant has ever evaded the enforcement of foreign judgements in its own jurisdiction or that it intends to do so in the present case.

ORDER:

The request for security of costs is dismissed.

DETAILS OF THE ORDER:

App_35905/2024 related to the main proceedings ACT_580849/2023

UPC-Number: UPC_CFI_373/2023

Subject of the Proceedings: Infringement action

INFORMATION ON REVIEW

The order is subject to the right of review by the panel on a reasoned application by a party lodged within 15 days of service of the order (R. 333 (1), (2) RoP).

Issued in Düsseldorf on 5 August 2024

Names and Signature

Dr Thom