



**Local Chamber Munich**  
UPC\_CFI\_149/2024  
ACT\_16251/2024

**Decision**  
**of the Court of First Instance of the Unified Patent Court Local Chamber**  
**Munich**  
**issued on 20 June 2025**

GUIDING PRINCIPLES

The application of a jurisdiction rule (here: Art. 33 (1) (a) UPCA)) is not precluded by the fact that the plaintiff did not explicitly base its grounds for the jurisdiction of the local division on this provision in the statement of claim, but merely mentioned another provision (here: Art. 33 para. 1 (b) UPCA). In this respect, nothing else applies to the reply to the opposition than to the reply to a statement of defence in infringement proceedings. The applicant can additionally rely on the further provision (continuation of the Court of Appeal, order of 18 September 2024, UPC\_CoA\_265/2024, APL\_30169/2024 - NST/VW; order of 21 November 2024, UPC\_CoA\_456/2024, APL\_44633/2024 - OrthoApnea).

Art. 33 para. 1 (b) sentence 2 UPCA does not refer to Art. 33 para. 1 (a) UPCA. Neither does the provision permit an action against several defendants, only one of whom has committed a patent infringement in the Contracting Member State of the chamber seised, nor does it impose special requirements for a single action against several defendants, all of whom have committed acts of infringement in the Contracting Member State concerned or are domiciled there. Art. 33 para. 1 (b) sentence 2 UPCA constitutes an extension of the jurisdiction rules to actions against persons who have neither committed a patent infringement nor have their seat in the Contracting Member State concerned, subject to the conditions required therein.

PLAINTIFF

**Headwater Research LLC**, represented by its owner Dr Gregory Raleigh, 110 North College Avenue, Suite 1116, Tyler, TX 75702, USA,

represented by: Attorney Dr Schneider and all other attorneys admitted to the UPC of the law firm Eisenführ Speiser, Gollierstraße 4, 80339 Munich.

DEFENDANT

1. **Motorola Mobility LLC**, represented by President Sergio Buniac, 222 West Merchandise Mart Plaza, Suite 1800, Chicago, Illinois, IL 60654, USA,
2. **Motorola International Sales LLC**, represented by President Sergio Buniac, 222 West Merchandise Mart Plaza, Suite 1800, Chicago, Illinois, IL 60654, USA,
3. **Motorola Mobility Germany GmbH**, represented by the Managing Directors Rembert Yarom Meyer-Rochow and Björn Simski, Vorstadt 2, 61440 Oberursel, Federal Republic of Germany,
5. **Flextronics International Europe B.V.**, Phase 9 Building, Nobelstraat 10 - 14, Oostrum, 5807 GA, Netherlands,

Defendants 1) to 3) represented by: Attorney Wunderlich, Freshfields Bruckhaus Deringer Rechtsanwälte Steuerberater PartG mbB, Potsdamer Platz 1, 10785 Berlin,

Defendant 5) represented by: Attorney Boris Kreye, Bird & Bird LLP, Maximiliansplatz 22, 80333 Munich.

PATENT IN SUIT

European Patent No. EP 3 110 069

PANEL/CHAMBER

Panel 2 of the Local Division Munich

#### PARTICIPATING JUDGES

This decision was issued by the judge Dr D. Voß as rapporteur.

#### LANGUAGE OF THE PROCEEDINGS

German

#### SUBJECT MATTER

Action for infringement - Objection under Rule 19.1 of the Rules of Procedure

#### FACTS OF THE CASE

- 1 The plaintiff is suing the defendants for an alleged infringement of the patent in suit. Originally, Digital River Ireland, Ltd. was also sued as defendant 4). After the latter fell into insolvency, the plaintiff declared the withdrawal of the action against defendant 4), which was admitted by decision of the adjudicating body of 13 June 2025.
- 2 With its action of 27 March 2024, the plaintiff announced the application to order the defendants to 1) to 3) to refrain from offering, placing on the market, using or importing or possessing wireless end-user devices according to claim 1 of the patent in suit (hereinafter: attacked end devices) in the Federal Republic of Germany (DE) and/or the Republic of France (FR), and/or the Kingdom of the Netherlands (NL) for the aforementioned purposes. Furthermore, it is asserting claims for recall, removal and destruction of the challenged end devices, information and invoicing as well as damages on the merits. According to the plaintiff's statements in the statement of claim, the challenged devices are all "Motorola" and "Moto" mobile devices with the Android 7 operating system or higher, which have a processor and a modem for mobile communication and were distributed after the date of publication of the grant of the patent in dispute.
- 3 The statement of claim was posted for service by registered letter with acknowledgement of receipt to the defendant 3) on 15 April 2024. Service was effected on 16 April 2024 and service on defendants 1) and 2) was effected on 23 April 2024.
- 4 Defendant 5) only entered the proceedings as a result of a change of party for a previously sued, non-existent person. The statement of claim against defendant 5) was filed on 18 October 2024 and subsequently served. The plaintiff asserts largely identical claims against defendant 5).

- 5 In the statements of claim, the plaintiff makes the following submissions regarding the defendants and the acts of infringement alleged against them:
- 6 Defendant 1) is the parent company of the Motorola Group, which has since been taken over by the Chinese technology company Lenovo. On the websites [www.motorola.de](http://www.motorola.de), [www.motrola.fr](http://www.motrola.fr), [www.motorola.it](http://www.motorola.it) and [www.motorola.nl](http://www.motorola.nl), which are aimed at customers in Germany, France, Italy and the Netherlands, the attacked devices bearing the trade marks "Motorola" and "Moto" brands, of which the defendant 1) describes itself as the manufacturer.
- 7 Defendant 2) is a subsidiary of defendant 1) and is involved in the distribution of the infringing forms in the EU. Among other things, it is responsible for the content of the aforementioned websites, which is evident from the terms of use there.
- 8 Defendant 3) is a German distribution subsidiary of defendant 1), which distributes the infringing designs in the Federal Republic of Germany, among other places.
- 9 Defendant 5) is involved in the distribution of the attacked designs in the EU as a logistics service provider for defendants 1) to 3). It operates a logistics centre in the Netherlands through which electronic devices of the brands "Motorola", "Moto" and "Lenovo" throughout Europe. On the occasion of a test purchase, the defendant (5) made the delivery of a challenged end device, a smartphone of the type "Motorola Edge 40 Pro", to the Federal Republic of Germany in January 2024. On the packaging of the device, the defendant to 1) as the manufacturer, which is also responsible for the user manual and the data sheet for the device.
- 10 Defendants 1) to 3) are part of the Motorola Group and offer and distribute the challenged devices in the Federal Republic of Germany, the French Republic and the Kingdom of the Netherlands. In doing so, they acted together consciously and in a division of labour, so that they had to accept the infringing acts of the other defendants as their own. Defendant 5) enables and promotes the infringing acts of the other defendants, which is why it is responsible for the infringing acts of the other defendants at least as an intermediary within the meaning of Art. 63 para. 1 sentence 2 UPCA.
- 11 Defendants 1) to 3) filed an objection with the court on 24 May 2024 and objected to the lack of service of the Munich Local Division. Defendant 5) also filed an objection on 18 November 2024.

#### APPLICATIONS

12 The defendants 1) to 3) request that

to allow the objection pursuant to R. 19.1 lit. b VerfO EPG,

dismiss the action with regard to defendants 1), 2) and 3) by decision of the Judge-Rapporteur pursuant to R. 334 lit. g RPBA due to lack of jurisdiction of the Munich Local Division.

13 The applicant requests that

1. dismiss the objection pursuant to R. 19.1 of the Rules of Procedure of 24 May 2024
2. in the alternative, to decide on the objection in the main proceedings,
3. in the further alternative, to hear the parties in an oral hearing.

14 Defendant 5) requested that

- I. to allow the objection in its entirety and to dismiss the action as inadmissible with regard to defendant 5) due to the lack of jurisdiction of the Munich Local Division,
- II. to decide on the opposition in the context of an interlocutory decision pursuant to R. 20.1 VerfO,
- III. order the applicant to pay the costs of the opposition proceedings.

15 The applicant requests that

1. reject the objection (R. 19.1 VerfO) of the defendant 5) of 18 November 2024,
  - a) in the alternative, to decide on the objection in the main proceedings,
  - b) in the further alternative, to hear the parties in an oral hearing,
2. order the defendant 5) to pay the costs of the opposition proceedings.

#### POINTS IN DISPUTE BETWEEN THE PARTIES

16 Defendants 1) to 3) are of the opinion that the Munich Local Division of the Unified Patent Court does not have jurisdiction for the present action.

- 17 The plaintiff refers solely to Art. 33 (1) (b) UPCA for the alleged jurisdiction of the Munich Local Division. However, the requirements of Art. 33 (1) (b) sentence 1 UPCA are not met because the defendants 1) and 2) do not have their principal place of business in the Federal Republic of Germany. There was no submission regarding a place of business.
- 18 Similarly, the requirements of Art. 33 (1) (b) sentence 2 UPCA were not met via the defendant 3) as an "anchor defendant" were not fulfilled either.
- 19 The plaintiff does not substantiate what a sufficient business relationship of the defendants 1) and 2) with the defendant 3) should consist of. A business relationship of any kind is not sufficient; rather, it must be understood in terms of infringement. A mere affiliation to a group of companies or even a merely general business contact is not sufficient and would contradict the protective function of Art. 33 (1) UPCA. However, the plaintiff merely submits that the third defendant belongs to the Lenovo Group and is a subsidiary of the Motorola Group. The sufficient business relationship also does not result from the mere allegation of abstract acts of infringement on the basis of the business purpose stated in the extract from the commercial register. However, the plaintiff did not present any specific acts of infringement, in particular no participation in the distribution in the context of the alleged test purchase.
- 20 For this reason, there was also no "same allegation of infringement". The term is to be understood broadly. However, the plaintiff fails to show which act of infringement the defendant 3) is accused of as a whole, especially in relation to the defendants 1) and 2). In this context, it should also be pointed out that the plaintiff draws obviously incorrect conclusions from the credit form and commercial register extracts submitted as Annexes ES 1, ES 3 and ES 4.
- 21 In so far as the Applicant now invokes Article 33(1)(a) UPCA for the first time in the statement of opposition to establish the jurisdiction of the Munich Local Division for the action against the Defendants 1) and 2), it must, against the background of Rule 13.1(i) RPBA, adhere to its statement in the statement of claim that it relies exclusively on the rule of jurisdiction in Article 33(1)(b) UPCA.
- 22 For the aforementioned reasons, the Munich Local Division also lacks jurisdiction for the action against the defendant 3) itself.
- 23 Article 33 (1) (b) UPCA is not relevant due to the lack of an alleged act of infringement. The plaintiff refers solely to an extract from the commercial register of the defendant 3) (Annex ES 4). However, this does not show that the business operations of the defendant 3) are focused on offering and distributing mobile devices of the brands "Motorola" and "Moto". "Moto" brands. Moreover, the merely abstract statements in the extract from the commercial register did not allow the conclusion to be drawn that the defendant 3) "as the German sales subsidiary

of defendant 1) was involved in the supply and distribution of the contested designs in the Federal Republic of Germany". If the plaintiff now submits a screenshot of terms of use (Annex ES 14a) for the first time with the statement of defence, in which the defendant 3) is mentioned for the first time, this is a new factual submission. However, this was inadmissible and should not be taken into account. Even if the new submission were to be admitted, an act of infringement by the third defendant had not been submitted. The submitted terms of use merely show that defendant 3) is the contact address for the responsible legal entity of the website. Thus, the defendant 3) does not adopt the offers as its own. The responsible legal entity is recognisably another company.

- 24 All this also applies to Art. 33 para. 1 (a) UPCA, especially since the plaintiff, in the light of Rule 13.1 (i) RP, the Applicant must in any case adhere to its justification of exclusive jurisdiction by means of Art. 33 (1) (b) UPCA.
- 25 Insofar as the plaintiff refers to Article 32(1)(c) UPCA, this provision refers to the adoption of provisional and protective measures of interim measures, which are not the subject of the action.
- 26 Defendant 5) is of the opinion that the Munich Local Division specified by the plaintiff pursuant to Rule 13.1 (i) RP is not competent pursuant to Art. 33 (1) (b) UPCA, at least with regard to defendant 5). It had neither its principal place of business nor its place of business in the territory of the Local Division Munich.
- 27 The requirements of Art. 33 para. 1 (b) sentence 1, 2 UPCA were also not met.
- 28 The plaintiff had already failed to provide any evidence of a business relationship between it, the defendant 5), and the defendant 3) within the meaning of this provision. It also does not belong to the same group of companies as the third defendant.) No other business relationship has been demonstrated or is apparent. The plaintiff's objection does not indicate otherwise. A business relationship between it, the defendant 5), and the defendant 3) cannot be established by the fact that the online presence of Flex Ltd. refers to the municipality of Venray from the Netherlands or that "Flex" was honoured as a "Lenovo EMEA Logistics Supplier" in June 2023. The same applies to the designation "Lenovo EMEA DC" in the "Packing List".
- 29 Furthermore, the action against the respective defendants does not concern the same allegation of infringement. The plaintiff also lacks a substantiated submission in this regard. It had not been substantiated that it, the defendant 5), had been involved in the act of infringement alleged against the defendant 3). This also does not follow from the delivery note (Annex ES 15). This does not show that the end device was delivered to Germany.

delivered to Germany. The delivery note merely states that the delivery was made by the non-existent legal entity "Lenovo EMEA DC". The fact that the designation "Flextronics BV" appears in the c/o address line does not indicate that it refers to the defendant (5). The addition "Flextronics BV" does not clearly refer to the defendant 5) because other companies with the name element "Flextronics" and the legal form "BV" are located at the address. The plaintiff had also been aware of this at the latest since the submission of defendants 1) to 4) in the statement of 12 August 2024. Nevertheless, the plaintiff had requested a change of party in relation to the defendant 5) instead of substantiating the extent to which the allegation of infringement should have been concretised to it, the defendant 5). It is also unclear why the plaintiff assumes that the defendant 5) issued the delivery note. However, it had not actually issued the delivery note and had not delivered the contested design to Germany.

30 According to all of the above, there was also no "same allegation of infringement" within the meaning of Art. 33 (1) (b) sentence 2 UPCA.

31 For these reasons, the requirements of Art. 33(1)(a) UPCA were also not met, especially since in the light of Rule 13.1(i) RP it was questionable whether other rules of jurisdiction could be invoked at all. In particular, the plaintiff must state a reason for the jurisdiction of the Board in the statement of claim. Since the action lacks a conclusive justification for the jurisdiction of the Munich Local Chamber pursuant to Art.

33 (1) (a) UPCA for the defendant 5), the plaintiff must adhere to its original grounds for jurisdiction. In any event, the requirements of Art. 33 (1) (a) UPCA are not met, as there is no actual or imminent infringement by the 5th defendant. It is undisputed that it, the 5th defendant, does not manufacture the contested embodiment. It is also not involved in the distribution of the accused design to Germany, but merely acts as a holding company for the Netherlands and is only operationally active in relation to manufacturing management agreements in Mexico and other regions, but not in Germany. The plaintiff had not submitted any other facts that would allow the contrary conclusion. The information on the "Packing List" (Annex ES 16) is no proof of the involvement of the defendant 5) in sales activities to Germany. As stated, the delivery note does not allow any other conclusions to be drawn.

32 In the statement of claim, the plaintiff took the view that the Munich Local Division of the Unified Patent Court had international, substantive and local jurisdiction pursuant to Art. 31, 32 (1) (c), 33 (1) (b) UPCA. The request concerned the adoption of measures due to the infringement of a European patent.

33 The Local Division Munich already has jurisdiction under Art. 33 (1) (a) subpara. 3 UPCA for the action against the defendants 1) to 4) irrespective of their place of business, since the infringing acts of all defendants are also connected with the infringement of a European patent.

infringing acts of all defendants also took place in the Federal Republic of Germany. An inadvertently incomplete statement pursuant to Rule 13.1 (i) RP had no influence on the applicability of this provision.

- 34 However, the requirements of Art. 33 (1) (b) UPCA were also met. Defendant 3) has its place of business in the Federal Republic of Germany. According to its extract from the commercial register, its business activities are focussed on the supply and distribution of mobile telecommunications devices. It is also named as a contact on the website [https://www.motorola.de/legal\\_terms\\_of\\_use](https://www.motorola.de/legal_terms_of_use). As the point of contact on this website operated by the defendant 2), it claims ownership of the offers of the attacked embodiment available there. There is also a business relationship between the defendants 1) to 3). According to the case law of the UPC, this term should not be interpreted too narrowly in order to avoid multiple actions with the risk of contradictory decisions and a multiple burden on the court. The defendants re 1) to 3) are each group companies of the Lenovo Group whose business activity is directed towards offering and distributing the same products. Therefore, the action also concerns the same allegation of infringement.
- 35 The Munich Local Court also has jurisdiction to decide on the action against the defendant 5). This already follows from Art. 33 (1) (a) UPCA. Because the defendant 5) had delivered the sample of the contested embodiment, the Motorola Edge 40 Pro device, directly to Munich. It had issued the delivery note, whereby the plaintiff's submission was to be assumed to be correct for the examination of jurisdiction. Nor can it be inferred from the formal requirement of Rule 13.1(i) RP, which the application always fulfils, that Article 33(1)(a) UPCA does not apply.
- 36 Moreover, jurisdiction for the action against the 5th defendant also arises from Art. 33 para. 1 (b) sentence 2 UPCA. This is because the defendant 5) has a long-standing business relationship with the defendants 1) to 3). The latter has its registered office in the Federal Republic of Germany. Defendant 5) is a long-standing logistics service provider of the Lenovo Group, which is documented not least by its self-designation "Lenovo EMEA DC" on the delivery notes. Its task is to provide the defendants 1) to 3) with logistics services and, in this context, to deliver the devices of the brands "Motorola" and "Moto" offered and sold by the defendants 1) to 3) throughout Europe, including the delivery of a device to Munich. In this respect, the action against the defendant 5) was also based on the same allegation of infringement within the meaning of Art. 33 para. 1 (b) sentence 3 UPCA. The same patent claims were asserted and the same attacked devices were affected.

REASONS FOR THE ORDER

37 The oppositions of defendants 1) and 2) are inadmissible, the claims of defendants 3) and 5) are admissible but unfounded.

A

38 The objections of defendants 1) and 2) are inadmissible, those of defendants 3) and 5) are admissible.

I.

39 The objections of defendants 1) and 2) were not filed within the objection period.

40 Pursuant to Rule 19.1 of the Rules of Procedure, the time limit for filing an objection is one month. It begins with the service of the statement of claim, which was served on the defendants 1) and 2) on 23 April 2024, as evidenced by the certificate of service issued by the service agent "ABC Legal Services". Pursuant to Rule 300 (c) VerfO, the one-month period therefore expired on 23 May 2024. The objection was filed by the defendants 1) and 2) on 24 May 2024 and thus after the expiry of the objection period.

41 By way of derogation from Rule 271.6 (b) of the Rules of Procedure, service on the defendants 1) and 2) no fiction of service at a later date applies. Rule 271.6 (b) of the Rules of Procedure is found in the section on service of process in the Contracting Member States and is not applicable to service in the USA. For service of the application outside the Contracting Member States, Rule 273 et seq. of the Brussels Convention, which contains a Rule 271.6 (b) of the Brussels Convention, which do not contain a provision corresponding to Rule 271.6 (b) of the Brussels Convention and do not refer to it (see Local Chamber Hamburg, order of 12 December 2024, UPC\_CFI\_663/2024, ACT\_599/2024 - Hand Held Products/Scandit).

42 The fact that a different date of service appears in the CMS may be due to the fact that the CMS appears to generate the date of service automatically in all cases in accordance with Rule 271.6 (b) VerfO and the date cannot be changed manually without further ado (see Hamburg Local Chamber, order of 12 December 2024, UPC\_CFI\_663/2024, ACT\_599/2024 - Hand Held Products/Scandit). Ultimately, however, this is not relevant because in any case the actual date of service must be taken into account, for which not the CMS but the certificate of service or other proof of service is decisive. If the defendants 1) and 2) had made any errors in this respect based on the information in the CMS, there would have been an opportunity to extend the deadline in the event of ambiguities and, after the deadline had expired, the possibility of restitutio in integrum. Since no such request was made, the deadline remains 23 May 2024 with the consequence that the objection of the defendants 1) and 2) is time-barred.

II.

- 43 The objections of defendants 3) and 5), on the other hand, are admissible, as they were filed in due form and time within the meaning of Rule 19.1-3 of the Rules of Procedure.
- 44 The objection of defendant 3) was filed on 24 May 2024 within the one-month objection period pursuant to Rule 19.1 of the Rules of Procedure. The period for filing an objection began with the service of the statement of claim. Although this took place on 16 April 2024, the application is deemed to have been served within the contracting member states in accordance with Rule 271.6 (b) of the Brussels Convention on the tenth day after posting, i.e. in the case in dispute on 25 April 2024.
- Accordingly, the objection period ended on 25 May 2024 and the objection was filed by the defendant 3) on 24 May 2024 in due time. The same applies to defendant 5), who received the statement of claim on 18 October 2024 at the earliest and filed an objection on 18 November 2024 and thus within one month.

B

- 45 Notwithstanding the inadmissibility of the objections of Defendants 1) and 2), their objections, like the objections of Defendants 3) and 5), are not successful on the merits. The ground for objection pursuant to Rule 19.1 (b) VerfO does not apply. The Munich Local Chamber has jurisdiction to decide on the actions directed against the defendants 1) to 3) and 5).

I.

- 46 The Local Division Munich has jurisdiction for the action against defendant 3).
- 47 Jurisdiction arises from Art. 33 (1) (b) sentence 1 UPCA. The principal place of business of the defendant 3) is located in the Federal Republic of Germany, so that the local divisions located there have jurisdiction. In the case in dispute, the plaintiff brought the action against the third defendant before the competent local division in Munich. The place where the actual or threatened infringement occurred is irrelevant.

II.

- 48 The Local Division Munich continues to have jurisdiction for the actions against the defendants 1) and 2) pursuant to Art. 33 para. 1 (b) sentence 1 and 2 UPCA.
- 49 Together with Defendant 3), Defendants 1) and 2) are several defendants, one of which - namely Defendant 3) - has its principal place of business in the Federal Republic of Germany. In addition, there is a business relationship between this defendant and the defendants 1) and 2) have a business relationship and the action concerns the same allegation of infringement, Art. 33 (1) (b) sentence 2 UPCA.

1.

- 50 There is a business relationship between the defendants 1) to 3) within the meaning of Art. 33 para. 1 (b) sentence 2 UPCA.

- 51 The requirement of a business relationship implies a certain quality and intensity. However, in order to avoid multiple actions for the same infringement and the risk of irreconcilable decisions from such separate proceedings and to comply with the principle of efficiency within the UPC, the connection between the defendants must not be understood too closely in the sense of a business relationship. In this respect, it is sufficient if the defendants belong to the same group of companies or the same group of legal entities and carry out related commercial activities with the same purpose, such as research and development, manufacture, sale and distribution of the same products (Local Chamber Paris, order of 11 April 2024, UPC 11/04/2024, UPC\_CFI\_495/2023, ACT\_596432/2023 - ARM/ICPillar; Local Division Düsseldorf, order of 06/09/2024, UPC\_CFI\_165/2024, ACT\_18492/2024 - Novartis/Celltrion; see also Local Division Munich, order of 29/09/2023, UPC\_CFI\_15/2023, ORD\_576853/2023 - Edwards/Meril).
- 52 In the case in dispute, defendants 1) to 3) are part of a group of companies. Defendant 3) is a subsidiary of defendant 1), the parent company of the Motorola Group, which is now part of the Lenovo Group. Defendant 2) is also a subsidiary of defendant 1). According to the plaintiff's undisputed submission, defendants 1) to 3) also carry out a commercial activity with the same purpose, which is aimed at the manufacture, offering and distribution of end devices of the brands "Motorola" and "Moto".  
"Moto" brands. Defendant 1) manufactures the devices that are offered on websites for which defendant 2) is responsible in Germany, France, Italy and the Netherlands. According to the plaintiff's submission, defendant 3) is involved in the distribution of the challenged devices in the Federal Republic of Germany.
- 53 The defendants have not disputed this submission. They merely object to the fact that it cannot be concluded from the submitted credit reform and commercial register extracts that the business operations of defendant 3) are directed towards the offer and distribution of mobile devices of the "Motorola" and "Moto" brands and that defendant 3), as the German distribution subsidiary of defendant 1), is involved in the offer and distribution activities with regard to the attacked embodiments in the Federal Republic of Germany; the plaintiff only alleges acts of infringement in the abstract. However, the defendants are merely challenging the sufficient substantiation of the plaintiff's submission. However, the court of first instance must decide whether claims have been sufficiently presented, substantiated and, if necessary, proven in the main proceedings after a comprehensive examination of all (further) pleadings and evidence (Court of Appeal, order of 18 September 2024, UPC\_CoA\_265/2024, APL\_30169/2024 - NST/VW).
- 54 The plaintiff's further factual submission with Annex ES 14a and the question of its admissibility are therefore irrelevant.

55 Insofar as the defendants take the view that the plaintiff also draws the wrong conclusions from the extracts from the commercial register and credit reform regarding the other defendants, reference is made to the comments on defendant 3).

2.

56 The action against defendants 1) to 3) concerns the same allegation of infringement.

57 The plaintiff is proceeding against all defendants with identical claims based on one and the same patent. The products attacked in the action are identical for the defendants. According to the plaintiff's submission, the defendants 1) to 3) acted together consciously and in a division of labour, so that they would have to accept the infringing acts of the other defendants as their own. It is not necessary for the individual defendants' contributions to the offence to be identical. It is in the nature of things that these differ, for example if it is a supply chain with a manufacturer, dealers and customers. Even then - as here - the same allegation of infringement exists.

III.

58 Finally, the Munich Local Court also has jurisdiction for the action against the defendant 5).

1.

59 Jurisdiction also arises from Art. 33 (1) (b) sentence 1 and 2 UPCA.

a)

60 A business relationship within the meaning of Art. 33 para. 1 (b) sentence 2 UPCA exists between the defendant 5) and the defendants 1) to 3). It is true that the defendant 5) is not part of the Lenovo Group or the Motorola Group. However, according to the plaintiff's submission, defendant 5) is a logistics service provider for defendants 1) to 3), which is involved in the distribution of the accused embodiments in the EU. Defendant 5) operates a logistics centre in the Netherlands through which electronic devices of the brands "Motorola", "Moto" and "Lenovo" are distributed throughout Europe. In addition, the defendant 5) delivered a challenged device manufactured by the defendant 1) to the Federal Republic of Germany. Defendant 5) has disputed this submission insofar as it argues that it only acts as a holding company for the Netherlands and is only operationally active in relation to production management agreements in Mexico and other regions, but not in Germany. However, the defendant 5) does not deny a business relationship as such with companies of the Motorola Group and also a commercial activity with the same purpose - namely the promotion of manufacturing through manufacturing management agreements. It is merely of the opinion that the business relationship lacks a certain quality and intensity. The court is unable to agree with this. Any business relationship is sufficient for the requirements of Art. 33 para. 1 (b) sentence 2 UPCA. Only where these are reduced to a mere relationship under company law does a certain quality and intensity

only where these are reduced to a mere corporate relationship is a certain quality and intensity required, which expresses the requirement of related commercial activity with the same purpose. In this respect, Article 33 (1) (b) sentence 2 UPCA does not depend on the fact that the defendant 5) maintains the business relationship with precisely the defendant domiciled in the Contracting Member State, in this case the defendant 3). Rather, an indirect business relationship, such as with other companies of the Motorola Group, to which defendant 3) also belongs and with which it maintains business relations, is also sufficient. Otherwise, a plaintiff would be obliged to sue all companies of a group known to him in ignorance of the exact business relationships and the respective contributions to the offence in order to ensure that all companies sued have a direct business relationship with each other.

b)

- 61 The action against defendant 5) on the one hand and defendants 1) to 3) on the other also concerns the same allegation of infringement.
- 62 With regard to defendant 5), the plaintiff is also proceeding with the same claims from the same patent against the same terminal devices as with regard to defendants 1) to 3). In this respect, it alleges that defendant 5) is involved in the distribution of the accused embodiments in the EU as a logistics service provider for defendants 1) to 3) and, in particular, that it supplied a sample of an accused terminal device to the Federal Republic of Germany in 2024. This is sufficient for the identity of the infringement allegation.
- 63 The denial of the plaintiff's submission by the defendant 5) is irrelevant. In this respect, Art. 33 para. 1 (b) sentence 2 UPCA is not based on the infringement, but on the allegation of infringement. The conclusive allegation of a patent infringing act is therefore also sufficient here to establish the same allegation of infringement within the meaning of Art. 33 (1) (b) sentence 2 UPCA, in this case the delivery of a sample of the accused terminal equipment to the Federal Republic of Germany and the deliberate and intentional co-operation of the defendant 5) as a logistics service provider with the defendants 1) to 3). Whether the asserted claims are sufficiently set out, substantiated and, if necessary, proven, is reserved for examination and decision in the main proceedings.

2.

- 64 Even if one did not want to affirm jurisdiction for the action against the defendant 5) pursuant to Art. 33 (1) (b) sentence 1 and 2 UPCA, the jurisdiction of the Munich Local Division is also given under Art. 33 (1) (a) UPCA.

a)

- 65 The application of this provision is not precluded by the fact that the plaintiff did not explicitly base the jurisdiction of the Munich Local Division on Art. 33 (1) (a) UPCA in the statement of claim, but only mentioned Art. 33 (1) (b) UPCA. In this respect, the reply to the

to the opposition is the same as for the reply to a statement of defence in infringement proceedings.

aa)

- 66 According to the case law of the UPC, restrictions apply to the introduction of new legal arguments. Rule 13 RFees requires that the statement of claim contains the reasons why the facts alleged constitute an infringement of the patent claims, including legal arguments. This provision must be interpreted in the light of the last sentence of recital 7 of the Rules of Procedure, according to which the parties must present their case as early as possible in the proceedings. However, Rule 13 of the Rules of Procedure does not preclude an applicant from submitting new arguments after the application has been lodged. Whether a new argument is admissible depends on the circumstances of the case, including the reasons why the claimant did not already raise the argument in the application and the procedural possibilities for the defendant to respond to the new argument. In this assessment, the court of first instance has a certain margin of discretion (Court of Appeal, order of 21 November 2024, UPC\_CoA\_456/2024, APL\_44633/2024 - OrthoApnea; see also LK Brussels, order of 19 July 2024, APC\_CFI\_376/2023, ACT\_581538/2023 - OrthoApnea). In particular, it is not necessary for the claimant to anticipate all possible lines of defence and to list and submit all arguments, facts and evidence in the statement of claim and that nothing more can be added afterwards. This may be the case, in particular, if the plaintiff, having put forward an argument in its statement of claim, further substantiates that argument in its reply pursuant to Rule 29(a) or (b) RoP in order to respond to an objection raised by the defendant to the argument originally put forward in its statement of defence (Court of Appeal, order of 18 September 2024, UPC\_CoA\_265/2024, APL\_30169/2024 - NST/VW). Moreover, the above principles are to be understood in the light of the general principle that the court knows the law ("iura novit curia") and that the parties need only provide the facts ("da mihi facta, do tibi ius"). Even if Rule 13.1 (i) and (n) of the Rules of Procedure requires legal arguments in the statement of claim regarding patent infringement and, in particular, a justification for the jurisdiction of the local division seised, these arguments need not be conclusive, nor is the court limited to the justification provided by the plaintiff.
- 67 The above principles apply equally to a plaintiff's response to an opposition filed by the defendant. This is because the objection pursuant to Rule 19.1 (b) of the Rules of Procedure merely constitutes an objection to the jurisdiction of the division seised which is anticipated in the statement of defence and on which the plaintiff must already comment in the statement of claim pursuant to Rule 13.1 (i) of the Rules of Procedure. Moreover, the fact that the plaintiff must be able to make a supplementary submission on jurisdiction follows from the plaintiff's right, pursuant to Rule 19.5 sentences 1 and 3 of the VerfO to comment in writing on the defendant's objection. Such an opportunity to comment would not be necessary if new submissions were completely excluded.

bb)

68 In the case in dispute, the plaintiff's invocation of Art. 33 (1) (a) UPCA in the statement of opposition must therefore be taken into account in the decision on the defendant's opposition (5).

69 The plaintiff was not necessarily required to submit all possible jurisdictional provisions in order to preserve the possibility of invoking one of these provisions. Rather, after the defendant (5) denied the jurisdiction of the Munich Local Division in its objection, it was allowed to supplement and deepen its submission. In this respect, it must be taken into account that the plaintiff did not expand its factual submission in its response to the objection of the defendant 5) compared to the statement of claim. It relied solely on the facts presented in the statement of claim to justify the jurisdiction of the Munich Local Division and only invoked Article 33 (1) (a) UPCA as a supplementary legal basis for the jurisdiction of the division seized. The facts and the core issue - the jurisdiction of the local division in Munich - remain the same. However, such an extension of the legal argumentation must always be possible. Even if the plaintiff had not invoked Art. 33 (1) (a) UPCA in the case in dispute, the court would even have been free to base the jurisdiction of the local division on this provision - if necessary after informing the defendants. To deny the plaintiff in this procedural situation an invocation of a further jurisdiction provision would, subject to the jurisdiction to be affirmed here under Art. 33 (1) (b) UPCA, lead to the dismissal of the action for lack of jurisdiction of the division. However, this would not preclude a renewed action against the 5th defendant before the Munich Local Division, now based on Art. 33 (1) (a) UPCA. This would therefore gain nothing for the defendant 5). Instead, unnecessary costs and delays would arise in the enforcement of the plaintiff's claims. Related actions concerning the same challenged terminal device against several defendants would be separated and there would be a risk of contradictory decisions, which should be avoided.

70 The defendant 5) is not unreasonably disadvantaged by the admission of the appeal on the basis of Art. 33 (1) (a) UPCA. A successful appeal would not completely relieve the defendant 5) from legal recourse by the plaintiff. Instead, as stated above, a new action would be admissible before the Munich Local Division, then based on Art. 33 (1) (a) UPCA. Moreover, the defendant re 5) had sufficient opportunity to comment on the plaintiff's submission on the applicability of Art. 33 (1) (a) UPCA.

b)

71 The applicability of Art. 33 para. 1 (a) UPCA is also not precluded by the fact that Art. 33 para. 1 (b) sentence 2 UPCA contains a provision that refers to actions against several defendants, one of which is domiciled in the Contracting Member State whose local division has been seized (so also without justification: Court of Appeal, order v. 03.09.2024,

UPC\_CoA\_188/2024, APL\_21943/2024 - Dish/Aylo; also: Local Chamber Hamburg, order of 17 March 2025, UPC\_CFI\_169/2024, ACT\_19012/2024 - Daedalus/Xiaomi; aA: Local Chamber Paris, order of 11 April 2024, UPC\_CFI\_495/2023, ACT\_596432/2023 - ARM/ICPillar).

72 The provision in sentence 2 of lit. (b) of Art. 33 para. 1 UPCA is assigned exclusively to Art. 33 para. 1 (b) UPCA and does not refer to Art. 33 para. 1 (a) UPCA. The latter provision does not contain a comparable provision. Neither does it permit an action against several defendants, only one of whom has committed a patent infringement in the Contracting Member State of the chamber seised (Tilmann/Plassmann: Unitary Patent, Unified Patent Court, 1st ed. 2024: Art. 33 UPCA para. 50), nor does it impose special requirements for a single action against several defendants who have all committed acts of infringement in the Contracting Member State concerned or have their seat there. The latter is also not necessary according to the purpose of Art. 33 para. 1 (b) sentence 2 UPCA. It is not a generally restrictive provision for actions against several defendants, but rather an extension of the jurisdiction rules, subject to certain conditions, to actions against persons who have neither committed a patent infringement nor have a registered office in the contracting member state concerned. This extension of jurisdiction requires special justification. This is provided by Art. 33 para. 1 (b) sentence 2 UPCA. The person may only be sued together with another person domiciled in the contracting member state if there is also a business relationship between the persons and the action concerns the same allegation of infringement. However, such justification is not required if the respective defendant has already travelled to the territory of the Contracting Member State with his infringing act or is even domiciled there. The respective defendant is not worthy of protection because its registered office or sales activities are close to the court. Consequently, a local division that is closest to the infringement dispute has jurisdiction (Tilmann/Plassmann: Einheitspatent, Einheitliches Patentgericht, 1st ed. 2024: Art. 33 UPCA para. 4). However, the plaintiff is then free to sue all infringers who fulfil these requirements (domicile or infringement in the contracting member state) jointly without further restriction.

73 This understanding corresponds exactly to the system of Regulation (EU) No. 1215/2012 of 12 December 2012 (Brussels Ia Regulation), which has adopted Art. 33 para. 1 UPCA (Tilmann/Plassmann: Unitary Patent, Unified Patent Court, 1st ed. 2024: Art. 33 UPCA paras. 5-7; cf. for Art. 33 (1) (a): Court of Appeal, order of 3 September 2024, UPC\_CoA\_188/2024, APL\_21943/2024 - Dish/Aylo; also: Hamburg Local Chamber, order of 17 March 2025, UPC\_CFI\_169/2024, ACT\_19012/2024 - Daedalus/Xiaomi). Accordingly, a person domiciled in the territory of a Member State may be sued in the courts of that Member State pursuant to Article 4(1) Brussels Ia Regulation or, pursuant to Article 7(2) Brussels Ia Regulation, in the courts of another Member State in which the harmful event occurred or may occur in the case of a tortious act. There is no question that the action can also be brought against several persons

provided that the requirements of Art. 4 para. 1 or Art. 7 no. 2 Brussels Ia Regulation are met for each of them. Irrespective of this, pursuant to Art. 8 No. 1 Brussels Ia Regulation, a person domiciled in the territory of a Member State may also be sued together with other persons in another Member State if one of the persons is domiciled there and the relationship between the persons is so close that joint proceedings appear necessary.

c)

74 The plaintiff has conclusively argued that the defendant 5) has committed a patent infringement in the member state in question pursuant to Art. 33 (1) UPCA.

(a) UPCA a patent infringement has occurred in the Federal Republic of Germany.

75 The place where "the actual or threatened infringement has occurred or is likely to occur" within the meaning of Art. 33 para. 1 (a) UPCA is to be interpreted in the same way as the place "where the harmful event occurred or is likely to occur" within the meaning of Art. 7 No. 2 Brussels Ia Regulation (Court of Appeal, order of 3 September 2024, UPC\_CoA\_188/2024, APL\_21943/2024 - Dish/Aylo; likewise: Hamburg Local Court, order of 17 March 2025, UPC\_CFI\_169/2024, ACT\_19012/2024 - Daedalus/Xiaomi). It is therefore necessary that the asserted European patent has effect in the Federal Republic of Germany and that the infringement can also have occurred there. On the other hand, questions as to whether the conditions exist under which a right protected in the Member State of the court seised can be regarded as infringed and whether the defendant can be accused of this infringement are part of the substantive examination of the competent court. At the stage of examining the jurisdiction of a court to rule on an infringement that has occurred, the determination of the place of the infringement within the meaning of Article 33(1)(a) UPCA cannot depend on criteria that are reserved for substantive examination and are not contained in that provision (cf. on Article 7(2) Brussels Ia Regulation: Court of Appeal, order of 03/09/2024, UPC\_CoA\_188/2024, APL\_21943/2024 - Dish/Aylo; likewise: Hamburg Local Chamber, order of 17/03/2025, UPC\_CFI\_169/2024, ACT\_19012/2024 - Daedalus/Xiaomi).

76 The patent in dispute is in force in the Federal Republic of Germany. The infringement of the patent in suit by the defendant 5) alleged by the plaintiff also occurred there. This is because it is undisputed that a sample of the challenged terminal devices was delivered to the Federal Republic of Germany. The plaintiff's allegation is that the delivery was made by the defendant 5). This is sufficient to establish the jurisdiction of the Munich Local Division pursuant to Art. 33 (1) (a) UPCA. Whether the challenged terminal devices actually make use of the teaching of the patent in suit, i.e. whether the delivery to the Federal Republic of Germany constitutes a patent infringement and the defendant 5) can be accused of this, is not to be examined within the scope of the jurisdiction of the court, but is a substantive examination which is reserved for the final decision to be made in the main proceedings.

77 Moreover, the jurisdiction of the Local Division Munich results from the plaintiff's submission that the defendant 5) is involved in the distribution of the attacked embodiments in the EU as a logistics service provider for the defendants 1) to 3) and that the defendant 5) thereby enables and promotes the infringing acts of the other defendants, which is why it is responsible for the infringing acts of the other defendants at least as an intermediary within the meaning of Art. 63 para. 1 sentence 2 UPCA. This is because both the supply of a sample of the attacked terminal device manufactured by the defendant 1) and the offering of these terminal devices on the websites operated by the defendant 2) constitute a patent infringement in the Federal Republic of Germany, in which the defendant 5) is alleged to have been involved in any case through its capacity as a logistics service provider. Again, the question of whether a patent infringement actually exists and whether this can be attributed to the defendant 5), in particular whether the defendant 5) actually participated in the patent infringement as a logistics service provider, is reserved for the main proceedings. In this respect, the denial of the defendant 5) is in vain at this point.

C

78 In accordance with Rule 20.1 of the Rules of Procedure, the parties are informed that the proceedings will be continued in accordance with the Rules of Procedure due to the rejection of the opposition. The court will now take the final measures in the written proceedings before they are finalised.

79 Pursuant to Rule 21.1 of the Rules of Procedure, an appeal against a decision of the Judge-Rapporteur to reject the objection may only be lodged in accordance with Rule 220.2 of the Rules of Procedure. The appeal must therefore be admitted, which is at the discretion of the judge-rapporteur. Accordingly, the appeal is not allowed because the issues raised here have been clarified by the Court of Appeal. It is true that this order takes a different view from other first instance divisions with regard to the interpretation of Art. 33 (1) (b) sentence 2 UPCA. However, the present decision is based on Art. 33 para. 1 (a) and (b) UPCA. In addition, pursuant to Rule 21.1 RP in conjunction with 220.2 1st Alt. VerfO, there is an opportunity to lodge an appeal against the present decision with the appeal against the final decision. A reference to this possibility appears appropriate because the date for the oral hearing in the main proceedings is less than five months away. Despite the appeals relating to the jurisdiction of the local division, their implementation does not contradict the principle of procedural economy. This is because it cannot be assumed that the Munich local division will lack jurisdiction for the action against all defendants and that the action will have to be dismissed for this reason alone without the need for an oral hearing on the merits.

ORDER

1. The objections of the defendants 1) to 3) and 5) are dismissed.
2. The proceedings are continued.
3. The appeal is not authorised.

DETAILS OF THE ORDER


Order No. ORD\_69211/2024 in PROCEDURE NUMBER:  
UPC number:  
Nature of the proceedings:  
No. of the related proceedings Application no.:  
Type of request:

ACT\_16251/2024  
UPC\_CFI\_149/2024  
Action for infringement  
30222/2024  
Opposition

Order No. ORD\_69211/2024 in PROCEEDINGS NUMBER:  
UPC number:  
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ACT\_16251/2024  
UPC\_CFI\_149/2024  
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Opposition

Daniel  
Voß

 Digitally signed by  
Daniel Voß Date:  
2025.06.20  
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