

# Cross-border patent litigation in the EU and UPC after the CJEU's judgment in BSH v Electrolux

## 1 Factual background

On 25 February, the CJEU delivered its long-awaited judgment in the cross-border infringement case BSH Hausgeräte GmbH (“**BSH**”) v Electrolux AB (“**Electrolux**”) ([C-339/22](#)).

The German company BSH brought the Swedish company Electrolux before the Swedish court claiming infringement of all the national portions of its European patent EP1434512 (“**EP’512**”), which protects an invention in the field of vacuum cleaners.

EP’512 was validated in multiple EU member states, including Sweden, the Netherlands, Germany, France and Italy, and in non-EU member states, including Turkey and the UK.

Electrolux challenged EP’512’s validity and argued that, consequently, the Swedish court had no jurisdiction to hear BSH’s infringement claims concerning the non-Swedish portions of the patent. The Swedish court of first instance upheld Electrolux’s position.

BSH appealed, and the Swedish court of appeal referred the matter to the CJEU for a preliminary ruling regarding the interplay between Arts. 4.1 and 24.4 of Regulation (EU) No 1215/2012 (“**Brussels I bis Regulation**”). The question put to the CJEU was whether, under Art. 24.4, a national court with jurisdiction under Art. 4.1 to hear infringement actions against a person or company domiciled in their territory, regardless of the place of infringement, loses jurisdiction when an invalidity defence is raised.

## 2 The CJEU’s judgment in a nutshell

The CJEU:

- ruled that the EU member state court of the defendant’s domicile **does not have jurisdiction** to hear an **invalidity defence** raised by the defendant against a patent granted for another **member state**. The CJEU thereby confirmed **exclusive jurisdiction** of the courts of the **patent-granting state** to decide on patent validity (Art. 24.4);
- stated that in such cases the seised court **retains jurisdiction to hear the infringement claim**;
- outlined that if an invalidity claim has been raised by the defendant in the patent-granting state, the seised court **may stay** the infringement proceedings related to the

same country if it considers it appropriate, e.g., if it believes there is a reasonable chance that the patent will be revoked by the competent court;<sup>1</sup> and

- ruled that **Art. 24.4 does not apply to a court of a non-EU member state**. Therefore – subject to the absence of other restrictions, such as conventions with the non-EU member state in question – the court of the member state where the defendant is domiciled **has, in principle, jurisdiction also on the question of patent validity** to the extent this is raised as a mere defence by the defendant (i.e., only *inter partes*). Indeed, the **principle of non-interference** between states prevents decisions on the patent’s validity from having *erga omnes* effects, meaning that such decisions produce effects that are binding on the parties to the proceedings alone (i.e., *inter partes* effects).

### 3 Insights and implications for the UPC

The judgment has considerable implications within the **UPC context**.

The UPC, as a common court, is deemed to be a court of an EU member state under Art. 71.a of the Brussels I bis Regulation. It is thus required to **apply EU law, as interpreted by the CJEU in its judgments** and in accordance with Art. 20 UPCA.<sup>2</sup>

Art. 71.b.1 of the Brussels I bis Regulation grants the UPC jurisdiction when a national court of a UPCA contracting member state (“**UPC member state**”) would otherwise have jurisdiction. One could thus conclude that whenever an alleged infringer is **domiciled in a UPC member state**, the UPC then acts as the defendant’s court of domicile.<sup>3</sup>

In this scenario:

- With respect to infringements committed in **UPC member states**, the UPC has jurisdiction over infringement actions related to **European patents** (whether traditional or with unitary effect), based on Art. 1 UPCA. If an infringement action has already been lodged, the defendant’s revocation action or revocation counterclaim

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<sup>1</sup> Although the CJEU does not clarify this, it seems reasonable that in order to evaluate the likelihood of success of the invalidity case, the court seised of the infringement action might also assess the invalidity arguments raised in the invalidity case even if only to decide whether or not to stay the infringement proceedings while the invalidity action(s) brought by the defendant before the court(s) of the patent-granting state is pending.

<sup>2</sup> See *IMC Créations v Mul-T-Lock France and Mul-T-Lock Suisse* (UPC CFI 702/2024), mentioned below.

<sup>3</sup> Art. 71.b of the Brussels I bis Regulation determines the jurisdiction of the UPC, as a common court, without entering into the merits of the competence of local or regional UPC divisions, which indeed falls within the UPC’s internal competence under Art. 33 UPCA.

Therefore, the outcome of Joined Cases C-672/23 and C-673/23 on whether Art. 8(1) of the Brussels I bis Regulation designates a competent country or a competent forum has no impact on the identification of the competent UPC division (at the time of writing, the CJEU has not yet issued its judgement; however, Advocate General Juliane Kokott’s [opinion](#), delivered on 3 April 2025, states that under Art. 8(1), only a defendant domiciled in the judicial district of the court seised can be an anchor defendant, as that provision governs international and territorial jurisdiction alike, which means that it directly determines the court with territorial jurisdiction).

must be lodged in the same local or regional division as that seised for the infringement action.<sup>4</sup> The possible subsequent scenarios are outlined in Art. 33.3 UPCA. Conversely, if no infringement action has been lodged in a local or regional division, a revocation action shall be brought before the central division.

- With respect to infringements committed in **non-UPC member states**, the UPC has jurisdiction only over infringements of **European patents** (Art. 1 UPCA) **committed in EPC countries** (irrespective of whether they are EU member states). The UPC has no jurisdiction over infringement actions related to national patents (whether granted in EPC or non-EPC countries).

In infringement actions relating to European patents which are committed in EPC countries that are non-UPC member states):

- a) if the validation state is an **EU member state and is thus bound by the Brussels I bis Regulation** (e.g., Spain), **or a state bound by the Lugano Convention** (e.g., Switzerland), the court of that state has exclusive jurisdiction to rule on the validity of the European patent's national portion, and the UPC thus has no jurisdiction to hear an invalidity defence raised by the defendant concerning that portion of the European patent, with no *erga omnes* effects or *inter partes* effects; however, the UPC retains its jurisdiction over the infringement committed in that country; or
- b) if the validation state is a **non-EU member state** which is neither bound by the Brussels I bis Regulation nor by the Lugano Convention (e.g., the UK or Turkey), the UPC has, in principle, jurisdiction to address the invalidity defence raised by the defendant before the UPC concerning the national portion of the European patent, but only with *inter partes* effects.

Generally speaking, with regard to the possibility for the defendant to raise an invalidity defence before the UPC, Rule 25 RoP stipulates that if an allegation is made that the supposedly infringed patent is invalid, the statement of defence must include a counterclaim for revocation against the claimant's patent. The Vienna Local Division, in its decision in *Swarco v Strabag*, issued on 15 January 2025 ([UPC CFI 33/2024](#)), interpreted Rule 25 RoP as establishing the requirement of filing a revocation counterclaim for an invalidity defence to be considered.

This means that if a counterclaim for revocation cannot be raised because the UPC has no jurisdiction to rule on validity with *erga omnes* effects, the UPC is a more effective venue for a patent holder in an infringement action (and conversely a less effective one for the defendant) compared to national courts of EU member states, before which the defendant can always claim the invalidity of foreign patents and foreign national portions of European patents, at least through a (mere) invalidity defence.

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<sup>4</sup> Unless the parties have agreed to bring actions before the central division, in which case the revocation counterclaim must also be lodged with the central division.

Nevertheless, the Paris Local Division, in its decision in *IMC Créations v Mul-T-Lock France and Mul-T-Lock Suisse* ([UPC CFI 702/2024](#)), issued on 21 March 2025, and even more recently the Mannheim Local Division in two decisions from 18 July 2025 in *Fujifilm Corporation v Kodak GmbH and Others* ([UPC CFI 365/2023](#) and [UPC CFI 359/2023](#)) – subsequent to the BSH judgment and the Vienna Local Division’s decision mentioned above – recognised the possibility for the defendant to challenge the validity of the UK portion of the claimant’s European patent through a mere defence (see section 4 below).

#### 4 Caselaw on the UPC’s long-arm jurisdiction

The application of the UPC’s long-arm jurisdiction was already evident in the *Fujifilm v Kodak* decision issued by the Düsseldorf Local Division before the CJEU judgment was issued ([UPC CFI 355/2023](#)).<sup>5</sup>

The defendant lodged with the UPC a counterclaim for revocation (only) of the German portion of the claimant’s European patent, which was in force in Germany and the UK, and argued that the court had no jurisdiction to hear the infringement action with respect to the UK designation. No revocation action had been filed in the UK. The Düsseldorf Local Division found the European patent to be invalid and thus revoked its German portion. It recognised that, as no revocation was sought for the UK portion, it did not have to decide whether it had jurisdiction to revoke (also) the UK portion, and thus “the outcome of the pending case BSH ... is not decisive”. However, the court found that it did have jurisdiction to rule on the infringement also with respect to the patent’s UK portion because the defendant was domiciled in a UPC member state (Germany<sup>6</sup>) and thus examined the UK patent’s validity but only to resolve the infringement issue. In that respect, the court assumed that the same grounds for invalidity in relation to the German portion of the patent applied to the UK portion, as the defendant stated that the UK portion was invalid for the same reasons as the German portion, and the claimant did not comment specifically on the differences between Germany and the UK in terms of validity assessments. The court concluded that the infringement action with respect to both Germany and the UK could not succeed.

Less than a month after the CJEU judgment, the Paris Local Division, in *IMC Créations v Mul-T-Lock France and Mul-T-Lock Suisse* ([UPC CFI 702/2024](#)), mentioned in section 3 above, referred to the BSH judgement and relied on it to confirm that when the defendant is domiciled in a UPC member state (in that case, France), the UPC has jurisdiction to hear an infringement action concerning national portions of a European patent in force in EPC member states that

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<sup>5</sup> This case was parallel to that decided on by the Mannheim Local Division and mentioned in section 3 above.

<sup>6</sup> However, it is reasonable to assume that the same conclusion would have been reached if the defendant had been domiciled in another UPC member state (e.g., Italy) and had brought the case in Germany, because Germany is the place where the harmful event occurred or might have occurred (*forum commissi delicti*).

are non-UPC member states (in that case, Spain, the UK and Switzerland), even though the validity of the European patent's national portions was challenged in those states.

Specifically, the Paris Local Division ruled that it had jurisdiction to hear the infringement action brought by IMC Créations, in relation to:

- the Spanish and Swiss portions of the European patent by suspending the infringement proceedings pending the decision of the national court hearing the invalidity action, if applicable, in the event of a reasonable risk of the patent being held invalid by the court of the validation state; and
- the UK portion of the European patent, over which the UPC had jurisdiction to address an invalidity defence with a decision with *inter partes* effects.

Even more recently, the Milan Local Division, in the case Dainese brought against Alpinestars for infringement of two Dainese patents (*Alpinestars S.p.A v Dainese S.p.A.*, [UPC CFI 792/2024](#)) confirmed that the UPC – deemed to be a common court to several member states, on condition that it is the court of the domicile of the defendant (in that case, Italy) – has universal jurisdiction over infringement claims concerning European patents validated in non-UPC member states (in that case, Spain) under Art. 32 UPCA and Arts. 4(1), 71a and 71b of the Brussels I bis Regulation. It also pointed out that a “different interpretation would have the effect of recognising that the UPC has less territorial jurisdiction than a national court, contrary to the provisions of Article 71a”.

Lastly, it is worth recalling the two landmark decisions issued on 18 July 2025 by the Mannheim Local Division in the infringement proceedings brought by Fujifilm against three German companies from the Kodak group concerning two European patents validated in Germany and the UK ([UPC CFI 365/2023](#) and [UPC CFI 359/2023](#)), mentioned above in section 3. By order of 2 April 2025, the panel had separated the proceedings with regard to the UK portion of the patent in order to wait for the CJEU's BSH judgment.

In its July 2025 decisions, the Mannheim Local Division took into account the CJEU's judgment and held that, when the defendant is domiciled in a UPC member state:

- a) the UPC has jurisdiction to decide on the infringement of a European patent's UK portion;
- b) the defendant in an infringement action before the UPC – although the UPC does not have jurisdiction to rule on the validity of a European patent's UK portion with *erga omnes* effects – may raise an invalidity defence regarding said UK portion by alleging the invalidity of that portion without being required to bring a national revocation action in the UK;
- c) the invalidity defence raised by the defendant under point (b) above results solely, within the infringement proceedings, in the UPC assessing the validity of the UK

portion (with *inter partes* effect only) as a mere prerequisite for infringement determinations. Accordingly, the UPC's decision affects neither the existence or content of the portion in question, nor does it cause the UK national register to be amended;

- d) no reason exists, in the absence of a pending national revocation action in the UK, to stay the infringement action before the UPC;
- e) the UPC has no jurisdiction to revoke the national portion of a European bundle patent for states other than UPC member states; and
- f) no legitimate interest exists for a defendant to obtain a declaration that the UK portion of a European patent is invalid, given that this declaratory relief is not binding on UK national authorities (which are solely responsible for the revocation of the UK portion of the patent – see point (b) above). Otherwise, the UPC would indirectly decide on the validity of the UK portion, which would be contrary to the principles established by the CJEU.

In one case ([UPC CFI 359/2023](#)), the infringement action was dismissed because the patent was deemed invalid. In the other case ([UPC CFI 365/2023](#)), the Mannheim Local Division granted Fujifilm the UPC's first-ever injunction covering the UK.

## 5 Final remarks

The BSH judgment represents a significant turning point in European patent litigation.

It moves away from the CJEU's earlier caselaw (see [GAT/LUK](#) case), which prevented cross-border injunctions when an invalidity defence had been raised, and instead **strengthens enforcement opportunities for patentees across Europe**.<sup>7</sup>

As a result of this judgment, patentees can now **consolidate all infringement actions before a single court** of an EU member state (i.e., the court of the infringer's domicile) to seek cross-border relief and damage compensation for **infringements committed in all countries where the invention is protected** by the same patent or by different patents (whether European or national).

This might lead to national courts being viewed as a more effective alternative to the UPC for cross-border patent litigation – whose authority is limited to European patents – if the patentee owns patents also outside Europe and wants to bring all its infringement claims before a single court.

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<sup>7</sup> Indeed, the European Commission in its Report to the EU Parliament, the Council and the EU Economic and Social Committee on the application of the Brussels I bis Regulation [COM(2025) 268 final], p 13 seq.] mentioned the possibility of reconsidering the wording of Art. 24(4) of the Brussels I bis Regulation, which was aimed at codifying the GAT caselaw in light of the recent developments in the BSH judgment.

Although the judgment simplifies enforcement for patentees, it simultaneously places a **greater burden on defendants**, who can no longer easily sidestep the forum chosen by the patentee by simply raising an invalidity defence.

That said, defendants may start **multiple invalidity proceedings** before the national courts of the countries where the patent has been granted/validated (whether EU member or non-EU member state courts), which will likely lead to **increasingly complex litigation, higher legal costs** and the **risk of conflicting judgments** across jurisdictions, given that the EU infringement court will retain jurisdiction over the infringement issue and may (i.e., does not have to) **stay** the infringement proceedings while the validity proceedings are pending.

The BSH judgment has considerable implications for the UPC, and given that the UPC confirmed the CJEU's reasoning in recent decisions, more UPC system users will likely be encouraged **to use the UPC to enforce their European patents, also outside UPC member states**. The CJEU judgment in BSH thus **enhances forum shopping possibilities** for patentees, as they can now choose between EU national courts and the UPC to bring infringement actions concerning multiple national designations of non-opted out European patents, at least during the transitional period (see Art. 83 UPCA).

An additional consideration concerning the UPC is that **invalidity claims** relating to **non-opted-out European patents** validated in UPC member states can be decided **within the UPC system** (Art. 33.3 UPCA). This might help defendants by allowing them to challenge patent validity through a single action, thereby increasing the **risk** for all the national portions of the claimant's European patent validated in the UPC member states being **invalidated at once**.

Defendants may also choose to initiate **pre-emptive declaration of non-infringement actions** to prevent other national courts or the UPC from ruling on the infringement of European patents based on *lis pendens* rules.

Conversely, the BSH judgement could make litigation more complex with respect to the **determination and application of the pertinent substantive law**, especially for EU national courts seised of the infringement of non-European patents. Indeed, in deciding the likelihood of success of an invalidity action pending before the court of the patent-granting state, the seised court would have to apply foreign law, which could be particularly complex for certain validity requirements where there is little uniformity among countries (e.g., added matter, inventive step and sufficiency of disclosure).

The seised court would have to apply foreign law also in assessing the infringement and granting injunctions and other remedies. This too could add complexity with respect to certain aspects, such as infringement by equivalents, statute of limitations on damages claims, and the available remedies, if differences between applicable national laws exist.