



**Local Division Munich**

UPC\_CFI\_425/2024  
ACT\_42211/2024  
App\_54919/2024

**Order**  
**of the Court of First Instance of the Unified Patent Court**  
**Local Division Munich**  
**issued on 19 March 2025**

**Headnotes:**

With regard to a country that fails to fulfil its obligations under the Hague Service Convention, it has to be assumed that an order for reimbursement of costs by the UPC may not be enforceable in this country or just in an unduly burdensome way.

**APPLICANTS (DEFENDANTS IN THE INFRINGEMENT PROCEEDINGS)**

1. **Chint New Energy Technology Co., Ltd.**, NO.1 Jisheng Road, Jianshan New Zone, 314415 Haining City, Zhejiang Province
2. **Astronergy Europe GmbH**, Stralauer Platz 33-34, 10243 Berlin
3. **Astronergy GmbH**, Stralauer Platz 33-34, 10243 Berlin
4. **Astronergy Solarmodule GmbH**, Stralauer Platz 33-34, 10243 Berlin
5. **Astronergy Solar Netherlands B.V.**, Transformatorweg 38, 1014AK - Amsterdam
6. **Chint Solar Netherlands B.V.**, Transformatorweg 38, 1014AK - Amsterdam

represented by: Phillip Rektorschek (Taylor Wessing PartGmbH)

**RESPONDENT (CLAIMANT IN THE MAIN PROCEEDINGS)**

**JingAo Solar Co., Ltd.**, Jinglong Street, Ningjin County - 055550 - Xingtai City, Hebei Province - CN

represented by: Christopher Maierhöfer (Bird & Bird LLP)

**LANGUAGE OF PROCEEDINGS:**

English

**PATENT AT ISSUE:**

EP 2 787 541

**PANEL:**

Panel 1 of the Local Division Munich

**DECIDING JUDGES:**

This order has been issued by the legally qualified judge Tobias Pichlmaier (judge-rapporteur)

**POINTS AT ISSUE:**

Security for costs pursuant to R.158 RoP

## **Facts and parties requests**

The Applicants request for a security for costs. In support of their application, they point out that Claimant has its registered office in the People's Republic of China. With the application for a security for costs it is asserted that it is not sufficiently certain that a cost decision would be accepted and can be enforced in China.

Applicants therefore request to issue an order as follows:

The Claimant is ordered to provide adequate security within a period to be determined by the Munich Local Division for the costs of the proceedings and other costs pursuant to Rule 158.1 RoP by way of deposit on the UPC account dedicated for security deposits, alternatively by way of bank guarantee provided by a bank licensed in the EU, whereby the exact amount is subject to the discretion of the Munich Local Division but should be set by considering the maximum of reimbursable fees under the Rules of the UPC based on a value in dispute of 2 million EUR.

Respondent requests,

to dismiss the motions of Defendants.

Respondent argues that Defendants did not provide any substantive arguments for their speculative allegation that “the enforcement of a cost decision against the Claimant in China appears to be nearly impossible or at least highly difficult”.

In the opinion of Respondent the mere fact that Claimant has its registered office in a non-EU/non-EEA country cannot be relevant for the decision on an order for security. This would be a form of *a priori* discrimination, based precisely on the nationality of Claimant’s registered office/domicile, which is not provided for in any source of law.

## **Grounds for the order**

The respondent is right in saying that the mere fact that Claimant has its registered office in a non-EU/non-EEA country cannot be decisive for the decision on an order for security. This would be a form of *a priori* discrimination, based precisely on the nationality of Claimant's registered office/domicile, which is not provided for in any source of law.

According to the jurisdiction of the Court of Appeal it is decisive for an order for security (Art. 69 (4) UPCA and R.158 RoP), whether the financial position of the claimant gives rise to a legitimate and real concern that a possible order for costs may not be recoverable and/or the likelihood that a possible order for costs by the UPC may not, or in an unduly burdensome way, be enforceable (UPC\_CoA\_217/2024).

Defendants claim that it is generally assumed that it is not sufficiently certain that German judgements will be accepted and enforced in China and that there is no reason why the enforcement of UPC decisions in China should be any easier than the enforcement of German decisions. In contrast to this, Respondent claims that judgments of countries like Germany, Singapore, South Korea, USA, Australia, British Virgin Islands, Canada, Netherlands, New Zealand, and the UK have been recognized and enforced in China. Respondent refers to Article 267 of the Law of Civil Procedure of the People's Republic of China in this respect.

From the perspective of the judge rapporteur, the following must be stated:

Although the People's Republic of China has ratified the Hague Service Convention, European courts are facing significant difficulties in serving statements of claim and other documents in China:

It is not only the experience of European national courts (e.g. Higher Regional Court Munich, GRUR-RR 2020, 511), but also of the Unified Patent Court (e.g. LD Mannheim, UPC\_CFI\_332/2024), that requests for service from the Chinese authority in many cases are either not forwarded at all or objected to and returned. In UPC\_CFI\_508/2023 and UPC\_CFI\_509/2023, service of applications for provisional measures was unsuccessful, although the application could be served on the competent Chinese authority and the court registry was in e-mail contact with the

competent Chinese authority on this matter. However, the Chinese authority did not process the service for more than six months without any apparent reason.

With regard to a country that fails to fulfil its obligations under the Hague Service Convention, it has to be assumed that an order for reimbursement of costs by the UPC may not be enforceable in this country or just in an unduly burdensome way.

The amount of the security was to be set at € 200,000 according to the costs reimbursable in the event of a value in dispute up to 2 million €.

### **Order**

1. It is ordered that Claimant must provide security for costs to Defendants in an amount of € 200.000,00 by 30 April 2025. The security can be provided either
  - by an irrevocable, unconditional, unlimited and absolute guarantee at first request from a bank established and authorised to operate within the territory of the EPC Contracting Member States

or

  - by depositing the security amount in the Unified Patent Court's account set up for this purpose (indicated in point 3. on the website [www.unified-patent-court.org/de/court/payments](http://www.unified-patent-court.org/de/court/payments)).
2. An appeal may be filed against the order under no. 1 in accordance with Article 73 of the UPCA and Rule 220.2 of the UPCA Rules of Procedure.
3. The Respondent's attention is drawn to the fact that a default judgment may be entered in accordance with Rule 355 RoP if the security is not provided within the time limit set in accordance with no. 1 of this order.

Tobias Pichlmaier  
Judge-rapporteur