

UPC_CFI_429/2024
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 02/04/2025

CLAIMANT/S

- 1) **JingAo Solar Co., Ltd.** Represented by
(Claimant) - Jinglong Street, Ningjin County - Christopher Maierhöfer
055550 - Xingtai City, Hebei Province - CN

DEFENDANT/S

- 1) **Chint New Energy Technology Co., Ltd.** Represented by Phillip Rektorschek
(Defendant) - NO.1 Jisheng Road, Jianshan
New Zone - 314415 - Haining City, Zhejiang
Province - CN
- 2) **Astronergy Europe GmbH** Represented by Phillip Rektorschek
(Defendant) - Stralauer Platz 33-34 - 10243 -
Berlin - DE
- 3) **Astronergy GmbH** Represented by Phillip Rektorschek
(Defendant) - Stralauer Platz 33-34 - 10243 -
Berlin - DE
- 4) **Astronergy Solarmodule GmbH** Represented by Phillip Rektorschek
(Defendant) - Stralauer Platz 33-34 - 10243 -
Berlin - DE

- 5) **Astronergy Solar Netherlands B.V.** Represented by Phillip Rektorschek
(Defendant) - Transformatorweg 38 - 1014AK -
Amsterdam - NL
- 6) **Chint Solar Netherlands B.V.** Represented by Phillip Rektorschek
(Defendant) - Transformatorweg 38 - 1014AK -
Amsterdam - NL

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor/s</i>
EP4092759	JingAo Solar Co., Ltd.

DECIDING JUDGE

Presiding judge and Judge-rapporteur Sabine Klepsch

LANGUAGE OF PROCEEDINGS: English

SUBJECT-MATTER OF THE PROCEEDINGS: R. 158 RoP

STATEMENTS OF THE FORMS OF ORDER SOUGHT BY THE PARTIES:

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. 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.

The Defendants (requesting party) request in their submission dated 7 October 2024:

The Claimant is ordered to provide adequate security within a period to be determined by the Hamburg 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 Hamburg 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.

The Claimant (respondent) requests

to dismiss the motions.

The Claimant argues that Defendants did not provide any substantive arguments for their allegation that “the enforcement of a cost decision against the Claimant in China appears to be nearly impossible or at least highly difficult”. 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. The Claimant 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. The Claimant refers to Article 267 of the Law of Civil Procedure of the People’s Republic of China in this respect.

GROUNDINGS FOR THE ORDER:

The Court has the discretion to order a security for legal costs and other expenses. In accordance with the case law of the UPC (see CoA, Order of 17 September 2024 in case UPC_CoA_217/2024, Audi./NST), the Court, when exercising its discretion under Art. 69(4) UPCA and Rule 158 RoP, must determine, in the light of the facts and arguments brought forward by the parties, 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. The burden of substantiation and proof why an order for security for costs is appropriate in a particular case is on the defendant making such a request, but that – once the reasons and facts in the request have been presented in a credible manner – it is up to the claimant to challenge these reasons and facts and in a substantiated manner, especially since that party will normally have knowledge and evidence of its financial situation. It is for the claimant to argue that and why a security order would unduly interfere with its right to an effective remedy (see also CoA, order of 29 November 2024 in case UPC_CoA_548/2024, Arke ./ SodaStream).

Applying the above principles to the case at hand, the Defendants’ interests in obtaining a security does not outweigh the interest of the Claimant in view of the facts and arguments brought forward by the parties.

The Defendants’ mainly allege that enforcement of foreign judgments in China has proven to be enormously difficult. However, Defendants have not presented concrete evidence that could support its allegation that enforcing an order of reimbursement of legal costs would be particularly difficult in the future. The fact that the Claimant has its registered office in a non-EU/non-EEA country, especially in the People’s Republic of China, 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 (LD Munich CFI_514/2023). Art. 69(4) UPCA and R. 158(1) RoP do not differentiate between parties domiciled within or outside the EU. Therefore, the seat of a party cannot be considered to be the sole basis for an order to provide security for costs (different view, LD Vienna, UPC_CFI_33/2024, ORD_37208/2024). The LD Munich (CFI_425/2024, ACT_42211/2024) is in a parallel action of the opinion that if a country is involved, like the People’s Republic of China, that fails to fulfil its obligations under the Hague Service Convention, nevertheless it has

ratified it, 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 LD Hamburg does not share this opinion. There might have been difficulties in the past in serving documents in the People's Republic of China. The sole reference to the past difficulties of service under the Hague Service Convention in Germany as a member state does not provide sufficient reasons. As long as the Defendants' have not provided any well-reasoned facts that a decision on cost by the UPC cannot actually be enforced, it must be assumed that this is just as likely in the People's Republic of China as in any other non-EU states. Otherwise, a general suspicion would be made, although the court, that came into force on 1 June 2023, has no experience of its own in enforcing cost decisions in China. In addition, a simplified procedure for service by electronic means has now been implemented in the People's Republic of China, which could potentially facilitate both service in principle and any enforcement action. The fact that the Defendant 1) is also a Chinese company may further increase the likelihood of a successful enforcement of a cost decision in China.

ORDER

The application of the Defendants', dated October 7th 2024, to issue an order to provide adequate security is dismissed.

ORDER DETAILS

Order no. ORD_55997/2024 in ACTION NUMBER: ACT_42773/2024

UPC number: UPC_CFI_429/2024

Action type: Infringement Action

Related proceeding no. Application No.: 54918/2024