



UPC_CFI_819/2024
Procedural Order
of the Court of First Instance of the Unified Patent Court
issued on 3 April 2025
Preliminary Objections:
8315/2025
8851/2025
10368/2025
8312/2025
8203/2025

Claimant

Corning Incorporated, One Riverfront Plaza - 14831 - Corning - US

represented by: Dr. Marcus Grosch, Quinn Emanuel Urquhart & Sullivan, LLP,
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Defendants

- 1) **Hisense Gorenje Germany GmbH, (App 8203/2025)**
(Applicant) - Parkring 31-33, 85748 Garching near Munich, Germany

- 2) **Hisense Europe Holding GmbH, (App 8203/2025)**
Wienerbergstraße 11, Turm B, Stock 13, 1100 Vienna, Austria

- 3) **TCL Deutschland GmbH & Co. KG (App 8312/2025)**
(Applicant) - Bernhard-Wicki-Straße 5 - 80636 - München - DE

- 4) **TCL Deutschland Verwaltungs GmbH (App 8312/2025)**
(Applicant) - Bernhard-Wicki-Straße 5 - 80636 - München - DE

- 5) **TCL Operations Polska, Sp. z o.o. (App 8312/2025)**
(Applicant) - ul. A. Mickiewicza 31/41 - 96-300 - Zyrardów - PL

- 6) **TCL Belgium, SA, (App 8312/2025)**
(Applicant) - Rue du Paruck 35/19, 1080 Molenbeek-Saint-Jean, Belgium

- 7) **LG Electronics Deutschland GmbH, (App 10368/2025)**
(Applicant) - Alfred-HerrhausenAllee 3-5, 65760 Eschborn, Germany

- 8) **LG Electronics European Shared Service Center B.V, (App 8851/2025)**
(Applicant) - Krijgsman 1, 1186 DM Amstelveen, the Netherlands

- 9) **LG Electronics European Holding B.V.,(App 8315/2025)**
(Applicant) - Krijgsman 1, 1186DM Amstelveen, the Netherlands

All defendants represented by: Felix Rödiger, Bird & Bird LLP
Carl-Theodor-Str. 6 - 40213 - Düsseldorf – DE

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PATENT AT ISSUE: EP 3 296 274

DECIDING JUDGE: Prof. Dr. Peter Tochtermann acting as presiding judge and judge-rapporteur

LANGUAGE OF PROCEEDINGS: English

SUMMARY OF FACTS AND ORDERS SOUGHT

The defendants, which belong to three different groups of companies, namely TCL, Hisense and LG, filed preliminary objections. Claimant initiated separate proceedings against the alleged manufacturer of glass sheets also before the Local Division Mannheim (ACT_66849/2024; UPC_CFI_820/2024).

As main request they request to dismiss the proceedings.

As auxiliary requests they request to combine the present proceedings with ACT_66849/2024 (UPC_CFI_820/2024) and order a stay of the proceedings until service to the defendants in action ACT_66849/2024 (UPC_CFI_820/2024) took place in China and Hong Kong, SAR.

In parallel, the identical defendants filed requests for a stay of the proceedings with in part identical requests to the auxiliary request in this proceeding. Those requests have been rejected by order of 2 April 2025.

As far as defendants aim at having the case dismissed by their preliminary objection, they submit that Claimant is claiming infringement of a product allegedly directly obtained by a production process allegedly applied in China: a method claim that stipulates a glass sheet directly obtained from a certain process. Defendants on the other hand were mere distributors of LCD-TV, which purchase glass sheets from their suppliers being LCD panel producers without having a direct connection to the glass manufacturer. Defendants had no knowledge of the chemical composition of the glass sheets in the LCD-TVs being sold in Germany by themselves.

The action in fact would not relate to “the” action or identical forms of alleged infringement as the defendants belonged to three different group of companies without commercial relationship to each other. Rather Claimant should have knowledge of the supply chain of defendants products than the defendants themselves. Therefore, Claimant could not rely on Art. 33(1)(a) UPCA as there were in fact three different forms of infringement.

In the eyes of defendants this amounts to an artificial splitting of connected cases and should be discouraged as procedural tactics of Claimant. This artificial split would limit defendants’ possibility to defend against the infringement action as they were dependent on the input of the manufacturer with whom they had no contractual relationship. Suing three independent companies together would be counter to the principle of fair trial as the attacked embodiments were furthermore not identical. This were also counter to Art 33(1)(b)UPCA which would demand to sue producer and supplier together and thereby establish a commercial relationship. Claimant could withdraw the claims and re-file against the correct defendants.

Claimant requests to reject the preliminary objections.

The division were competent to hear the case against all Defendants named in the Statement of Claim under Art. 33(1)(a)UPCA. All of the Defendants named in the Statement of Claim were responsible for infringing acts in Germany, which were sufficient to establish competence of the division with respect to each of the Defendants individually in the absence of further requirements in Art. 33(1)(a)UPCA. The factual assertions in the Statement of Claim in and of itself were sufficient to establish competence of the Local Division Mannheim. Even defendants appeared to agree that the members of each of the groups of companies could be sued jointly. A commercial relationship were no prerequisite under Art. 33(1)(a)UPCA. Further R.303 RoP showed that proceedings could be initiated jointly against multiple defendants. Therefore, the question, if the prerequisites of Art.33(1)(b) UPCA were fulfilled, could be left open. That provision only applied where competence is established based on the residence or principal place of business of the defendant instead of infringing acts committed.

Further, Claimant characterizes defendants arguments supporting their request for a stay as misplaced in the context of R.19 RoP. The requests were an obvious attempt to delay the proceedings.

GROUNDS FOR THE ORDER

The preliminary objections of defendants had to be rejected. The UPC has international jurisdiction pursuant to Art. 7(2) in conjunction with Art. 71b(1) of the Brussels I recast Regulation and the Local Division Mannheim is competent under Art. 33(1)(a)UPCA.

1. Claimant submitted in its Statement of claim sufficient facts, which establish competence of the Local Division Mannheim for each and every defendant under Art. 33(1)(a)UPCA, which is reinforced by R. 303.1 RoP. Whether or not those allegations are true or not and if in fact all glass sheets stem from the same process and are identical or not is subject to the main proceedings (cf. UPC_CoA_188/2024 Order of 3 September 2024 para.18). Claimant was not obliged to sue the defendants to these proceedings jointly together with the defendants of ACT_66849/2024; UPC_CFI_820/2024. There is no such obligation always to sue OEMs and suppliers in one proceeding.
2. Therefore, it is not necessary to establish competence also under Art.33(1)(b)UPCA so that the arguments put forward by defendants do not have to be addressed.
3. Also, defendants general reference to fair trial principles is not persuasive and does not change the situation: First, in the end defendants do not contest that claimant could – and in their eyes even should – bring separate actions against all members of each group of defendants jointly. Therefore, in principle defendants themselves correctly see that multiple allegedly infringing defendants can be sued jointly. Second, their argument, that suing the three groups of companies being competitors were counter to their fundamental procedural rights, is misplaced, as the groups can even join forces in order to defend themselves against Claimant’s allegations. Obviously, they even did so by mandating identical representatives in order to save costs of litigation, which apparently had no reason to believe that they engaged in representing clients with conflicting interests in breach of professional laws applicable to German lawyers (§ 3 Abs. 1 German Berufsordnung für Rechtsanwälte as of 1 June 2023).

4. The auxiliary request is misplaced in the context of the preliminary objection, which contains an exhaustive list of points which may be subject of a preliminary objection (cf. UPC_CoA_188/2024 Order of 3 September 2024 paras.31 et seqq.). Furthermore, the respective points had been addressed by defendants in separate applications for a stay and had been rejected by order of 2 April 2025. Therefore, there is no need to address the duplicated requests again.
5. Leave to appeal did not have to be granted as the fundamental principles to be applied had already been clarified by the CoA as cited supra.

ORDER:

1. The preliminary objections of the Defendants are rejected.
2. No leave to appeal is granted.

Issued in Mannheim on 3 April 2025

Prof. Dr. Peter Tochtermann