

## ORDER

**of the Court of Appeal of the Unified Patent Court  
issued on 5 August 2024  
concerning service of a Statement of claim  
on defendants in China and Taiwan (R.273 and R.274 RoP)**

### HEADNOTE

- A defendant company in China or Taiwan cannot, as a starting point, be served a Statement of claim via a company within the same group in a Contracting Member State. Such a group company cannot automatically be seen as a statutory seat, central administration or principal place of business of a defendant company in China or Taiwan, nor a place where such defendant has a permanent or temporary place of business.
- Attempts to serve in China by any method provided for by the Hague Convention pursuant to R.274.1(a)(ii) RoP shall normally be made before service permitted by the law of the state where service is to be effected (R.274.1(b) RoP) or by alternative methods or at an alternative place (R.275 RoP) is permitted. Similarly, attempts to serve in Taiwan by diplomatic or consular channels pursuant to R.274.1(a)(iii) shall be made.

### KEYWORDS

- Service, Regulation (EU) 2020/1784, the Hague Convention, Service outside the Contracting Member States

### APPELLANT (AND CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE CFI)

**Daedalus Prime LLC**, New York, USA (hereinafter Daedalus)

represented by: Dr. Marc Grunwald, Rechtsanwalt, Peterreins Schley, Munich, Germany

### RESPONDENTS (1, 2 AND 5; NOT SERVED, 3 AND 4; DEFENDANTS IN THE MAIN PROCEEDINGS BEFORE THE CFI)

**1) Xiaomi Communications Co., Ltd.**, Beijing, China

**2) Xiaomi Inc.**, Beijing, China

**3) Xiaomi Technology Netherlands B.V.**, The Hague, the Netherlands (hereinafter Xiaomi NL)

represented by: Prof. Dr. Tilman Müller-Stoy, Rechtsanwalt, Bardehle Pagenberg, Munich, Germany

**4) Xiaomi Technology Germany GmbH, Düsseldorf, Germany (hereinafter Xiaomi DE)**

represented by: Prof. Dr. Tilman Müller-Stoy, Rechtsanwalt, Bardehle Pagenberg, Munich, Germany

**5) MediaTek Inc., Hsin-Chu City, Taiwan (hereinafter MediaTek)**

LANGUAGE OF THE PROCEEDINGS

English

PANEL AND DECIDING JUDGES:

This order has been issued by the second panel consisting of:  
Rian Kalden, Presiding judge and legally qualified judge  
Ingeborg Simonsson, legally qualified judge and judge rapporteur  
Patricia Rombach, legally qualified judge

IMPUGNED ORDER OF THE CFI

- Date: 18 April 2024
- Order ORD\_20986/2024 of the Hamburg Local Division, concerning ACT\_19012/2024, in the infringement action UPC\_CFI\_169/2024; leave to appeal was granted in the order.

ORAL HEARING

6 June 2024

PATENT IN SUIT

EP 2 792 100

POINTS AT ISSUE

Service of a Statement of claim on defendants in China and Taiwan

SUMMARY OF FACTS

1. Daedalus brought an infringement action against defendants 1-5 before the Court of First Instance, Hamburg Local Division. According to the information in the Statement of claim, defendants 1 and 2 (hereinafter jointly referred to as the Chinese Xiaomi companies) have their registered offices in China, while defendants 3 and 4 (Xiaomi NL and Xiaomi DE) have their registered offices in the Netherlands and Germany respectively. Defendant 5 (MediaTek) has its registered office in Taiwan.
2. Daedalus claimed that service of the Statement of claim on the Chinese Xiaomi companies should be effected via Xiaomi DE, and that service on MediaTek should be effected via MediaTek Germany GmbH, according to R.271.5(a) RoP.

3. The Hamburg Local Division dismissed Daedalus' request. The Local Division held that R.271.5 RoP is not (yet) applicable. It pointed out that the Chinese Xiaomi companies and Mediatek are domiciled outside the territory of the Contracting Member States of the Agreement on a Unified Patent Court (UPCA) and that Daedalus was not even arguing that these companies would have their statutory seat, central administration or principal place of business nor their own permanent or temporary place of business within the Contracting Member States. The conclusion of the Local Division was that service must be effected in accordance with R.273 and R.274 RoP. These provisions demand at least a first attempt of service on the Chinese Xiaomi companies in accordance with R.274(a)(ii) RoP under the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965, hereinafter 'the Hague Convention', since the People's Republic of China does not fall within the scope of Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) hereinafter referred to as 'Regulation (EU) 2020/1784', but is a party to the Hague Convention. Similarly, R.274(a)(iii) RoP requires at least a first attempt of service on MediaTek through diplomatic or consular channels from the Contracting Member State in which the sub-registry of the relevant division is established (Germany), since there is no convention or agreement with Taiwan in force.
4. Daedalus requested, on an auxiliary basis, that service be made regularly in accordance with the Hague Convention on the Chinese Xiaomi companies and MediaTek, if the Court would not agree to service according to R.271.5(a) RoP. Daedalus was instructed to submit to the Local Division the documents required for service on those companies in accordance with the Hague Convention and/or the requirements for diplomatic service (see para 3 above), in particular the necessary translations into Chinese.
5. Daedalus has appealed the order.
6. Since the Chinese Xiaomi companies and MediaTek have not been served the Statement of claim, they have not yet become parties to the proceedings before the UPC. The Court of Appeal has consequently not communicated the appeal with those companies. Such communication would furthermore require service of the Statement of appeal and other documents, and the legal assessments made in the choice of method of service would precede and predict the outcome of the point at issue pending in the appeal proceedings.
7. With the consent of the parties, the case has been heard together with case APL\_24585/2024, UPC\_CoA\_205/2024, a similar case which concerns service in China.
8. At the oral hearing, Daedalus presented an auxiliary request that the Court of Appeal should order (i) that the service of the Statement of claim on Xiaomi DE was good service on the Chinese Xiaomi companies, specifying that the place of service is the address of Xiaomi DE as indicated in the Statement of claim, that the Statement of claim is deemed served on the Chinese Xiaomi companies on the date Xiaomi DE was served (auxiliary: on the date of the decision of the Court of Appeal), and that the period for filing the Statement of defense for the Chinese Xiaomi companies started on the date of service of the Statement of claim upon Xiaomi DE) (auxiliary: on the date of the decision of the Court of Appeal) (ii) that the delivery of Statement of claim by "Go! Express + Logistics München courier" on

April 18, 2024 on Mediatek Germany GmbH was good service on MediaTek, specifying that the place of service is the address of Mediatek Germany GmbH as indicated in the Statement of claim, that the Statement of claim is deemed served on the date Mediatek Germany GmbH was provided with the Statement of claim (auxiliary: on the date of the decision of the Court of Appeal), and that the period for filing the Statement of defense for MediaTek started on the date of service of the Statement of claim upon Mediatek Germany GmbH (auxiliary: on the date of the decision of the Court of Appeal).

9. These auxiliary requests were dismissed by the Court of Appeal at the oral hearing. The auxiliary requests were first brought at the oral hearing. Daedalus was not able to justify that the auxiliary request could not reasonably have been made earlier and allowing them would have contravened the interests of the other party (R.222.2 RoP).

#### INDICATION OF PARTIES' REQUESTS

10. Daedalus has requested that the impugned order be set aside and that the Hamburg Local Division be directed to serve the Statement of claim on the Chinese Xiaomi companies and MediaTek via the designated German branch offices (The Court of Appeal notes that with the expression "the designated German branch offices", Daedalus is in fact referring to Xiaomi DE and MediaTek Germany GmbH).
11. Xiaomi NL and Xiaomi DE have requested that the appeal is rejected, and that the Court of Appeal shall order that Daedalus shall bear the costs of the appeal proceedings.

#### PARTIES' SUBMISSIONS

Daedalus – in summary and insofar as relevant – has argued as follows.

12. The national German subsidiaries of the Chinese Xiaomi companies and Mediatek are each a "permanent place of business" in the meaning of R.271.5(a) RoP. The Xiaomi Group pursues a uniform business policy and uses Xiaomi DE to conduct its operational business in Germany. Xiaomi DE is a wholly owned subsidiary of Xiaomi NL. Xiaomi Inc. in turn is the global parent company of both European subsidiaries and is therefore the parent company that holds all shares, either indirectly or through intermediary companies, in the European subsidiaries. Consequently, there is a uniform strategy, Xiaomi DE, although a separate company, acts as an extension of the Chinese parent company. The Chinese parent / umbrella company is formed by both Xiaomi Communications Co., Ltd., as the manufacturer of the infringing smartphones and Xiaomi Inc., which also maintains the German-language website. The Chinese Xiaomi companies determine the global business of the Xiaomi Group and divide the manufacture and marketing of the infringing products between them.
13. MediaTek Germany GmbH is a wholly owned subsidiary of MediaTek. MediaTek Germany GmbH must follow the instructions of MediaTek and carry out the German sales activities as an extended arm. It constitutes a permanent place of business.
14. The existence of a "separate legal entity" is insignificant. A subsidiary can also constitute a place of business within the meaning of R.271(5)(a) RoP.

15. Daedalus disputes the submission of Xiaomi NL and Xiaomi DE that Chinese law generally does not provide for service via a branch office. The opposite is applicable: in case of an action against a foreign company, service can be effected on its Chinese branch (cf. Section 274 of the Civil Procedure Law of the People's Republic of China as amended in 2022).
16. The Chinese Xiaomi companies and MediaTek will obtain reliable knowledge of the Statement of claim, if the Statement of claim is served via Xiaomi DE and MediaTek Germany GmbH.
17. Application of the provisions of Part 5, Chapter 2, Section 1 RoP - Service within the Contracting Member States - does not depend on the domicile of the defendant. Service according to this Section can also be directed at defendants resident outside the Contracting Member States. R.271 RoP regulates the process of service within the Contracting Member States, whereby only the place of the requested service (within the Contracting Member State) is relevant, not the actual seat of the defendant.
18. The Hague Convention, according to its Article 1, only applies once it has been established that the service in question is a service abroad. As to when service abroad is required, the Hague Convention leaves this open, and it is established in international procedural law that whether service is taking place abroad is a question to be decided applying the law applicable at the court seized. The Hague Convention is therefore not mandatory, and in cases in which domestic service can be effected under the national law of the lex fori, the court conducting the proceedings has the option of using this national form of service in the pending proceedings. It is the Rules of Procedure that are relevant for the question of service.
19. R.271.5(a) RoP is worded very broadly. It is not the defendant's domicile that is decisive, but the question whether service abroad is necessary at all. The defendant's domicile and the address for service may or may not coincide. The ratio behind R.271.5(a) RoP is to provide a quick and effective means of service. The second half-sentence of R. 271.5(a) RoP - any place within the Contracting Member States where the company or other legal person has a permanent or temporary place of business - does not refer to the domicile of a defendant company in the Contracting Member States, but leaves the domicile of the defendant open and only requires service to be effected at its branch office within the Contracting Member States. The legislator's intention in R.271(5)(a) RoP is to grant the possibility to serve within the Contracting Member State at a place other than the registered office of a defendant. The wording of R.271.5(a) RoP is clear and unambiguous and demonstrates that service can be effected at any place within a Contracting Member State where a defendant has a temporary place of business, regardless of the defendant's domicile.

Xiaomi NL and Xiaomi DE – in summary and insofar as relevant – have argued as follows.

20. A claimant does not have the right to choose where service is to be carried out. Service on the Chinese Xiaomi companies has to be effected according to the provisions for service outside the Contracting Member States.
21. Art. 285 of the Chinese law of civil procedure in particular requires service of a Chinese translation of the Statement of claim which would be violated if service could be effected via Xiaomi DE. Effecting

service via an establishment abroad is also unknown to Chinese law in general. Thus, the first attempt of service stipulated in R.273 and R.274 RoP has not yet been made.

22. Applicability of R.271.5 RoP in the present case would contravene EU Law. Even if one were to apply R.271.5 RoP, Daedalus lacks any submission as to why Xiaomi DE would constitute a permanent or temporary place of business of the Chinese Xiaomi companies, which in fact is not the case. The place of business in R.271.5 RoP is to be narrowly interpreted and requires a robustness. Subsidiaries or group companies are no permanent or temporary place of business. The allegation that Chinese/Taiwanese defendants will be informed by their subsidiaries if they are served is contested. Daedalus has no prevailing interest for service on Chinese Xiaomi companies effected via Xiaomi DE.
23. In compliance with EU law, the domicile of the defendant is decisive for the application of the rules of Section 1 or Section 2 RoP and thus for the requirements of service, irrespective of the lex fori. It follows from CJEU case-law that the lex fori is not so far-reaching that it is exclusively for the national law to decide on the scope of Regulation 2020/1784, but that the domicile of the defendant is to be taken into account (Alder, CJEU, Case C-325/11 and the Advocate General opinion in AB Volvo, Case C-632/22). Under EU civil procedural law, the concept of domicile is this central that it is not admissible to effect service on a parent company by serving on the subsidiary or other affiliated companies of the same group. This would undermine fundamental rights of the defendant.
24. Furthermore, Xiaomi DE is neither a direct subsidiary of the Chinese Xiaomi companies, nor directly controlled by them. It is a wholly owned subsidiary of Xiaomi NL.
25. R.271.5(a) RoP cannot apply to service on defendants being domiciled outside the Contracting Member States. The provision states that service shall be effected at any place within the Contracting Member States where the company has a permanent or temporary place of business. According to the clear systematic structure of the rule, both places of business must be located within the Contracting Member State. R.271.5 RoP is not applicable. Daedalus' argument would contradict basic principles of civil procedure and company law.
26. Neither Regulation 2020/1784 nor the Hague Convention permit the imputation of knowledge as a substitute for formal service. According to Article 24(1)(d) UPCA, the international agreements binding the Contracting Member States are equally binding on the UPC. Fictitious service would also constitute a violation of Article 47 of the Charter of Fundamental Rights of the European Union and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Fair and just proceedings according to Article 42 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which is also mirrored in Article 103 of the German Charter of Fundamental Rights, would not be guaranteed.

## REASONS

### *The additional submission*

27. Daedalus made a written submission to the Court of Appeal after the oral hearing (App\_37954/2024). This submission has been disregarded by the Court of Appeal. Requests, facts and evidence which have

not been submitted by a party during proceedings before the Court of First Instance may be disregarded by the Court of Appeal. The submission was made on Daedalus' own initiative and was lodged 19 days after the oral hearing, which is obviously too late to be taken into account.

*In substance*

28. Rules on service of documents are essentially there to ensure that the court, before delivering a default judgment can verify whether the means by which a document instituting proceedings was served were such that the rights of the defence have been respected (Case C-14/07, Weiss und Partner, ECLI:EU:C:2008:264, para 51).
29. The guarantee of actual and effective receipt of documents, that is to say, service on the defendant, together with the existence of a period of time sufficient to enable the defendant to prepare his or her defence, is a requirement of respect for the right to effective judicial protection enshrined in Article 47 of the Charter of Fundamental Rights of the European Union. Authority for a subsidiary to receive on behalf of its parent company judicial documents intended for it cannot be presumed, otherwise there is a risk of prejudicing the parent company's rights of defence. (See judgment of the CJEU of 11 July 2024 in Case C-632/22 Volvo (Assignment au siège d'une filiale de la défenderesse), ECLI:EU:C:2024:601, paras 50-51).
30. Article 24(1)(d) of the Agreement on a Unified Patent Court (UPCA) stipulates that the Court shall base its decisions on other international agreements applicable to patents and binding on all the Contracting Member States. In compliance therewith, the RoP provisions on service of documents are designed in conformity with EU law and the Hague Convention.
31. The relation between Regulation 2020/1784 and the Hague Convention is touched upon in Article 29 of Regulation 2020/1784, entitled "Relationship with agreements or arrangements between Member States": The Regulation shall prevail in relation to matters to which it applies over other provisions contained in bilateral or multilateral agreements or arrangements concluded by Member States, and in particular the Hague Convention, *in relations between the Member States party thereto* (emphasis added). Article 15 of the Hague Convention is furthermore applicable according to Article 28.4 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, where Regulation 2020/1784 is not applicable and if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.
32. The Hague Convention has been acceded to by all EU Member States. Although the Convention does not have a clause allowing the EU itself to accede, accession to the Convention falls within the exclusive external competence of the EU following the adoption of EU internal rules on service of documents (see for example Proposal for a Council Decision authorizing Austria and Malta to accede to the Hague Convention, COM/2013/0338 final). The Convention, improving the transmission of judicial and extrajudicial documents abroad is particularly important for the EU and its Member States because it facilitates judicial cooperation in cross-border litigation in relations with third states. The EU in its external relations has been promoting the accession of third countries to the Hague Convention as an

efficient and reliable system for the service of judicial and extrajudicial documents (COM/2013/0338 final).

33. It is thus clear that while Regulation 2020/1784 is intended for intra-Community service, the Hague Convention applies (insofar as is relevant here) for transmission of judicial documents abroad in cross-border litigation in relations with third states. This is reflected in the RoP.
34. Although there is no definition of what constitutes service within and outside the Contracting Member States respectively there is a systematic division between these two types of service. As can be seen from the headings of Sections 1 and 2 of Part 5, Chapter 2 of the RoP, service within the Contracting Member States is governed by R.270 through 272 RoP. Service outside the Contracting Member States is instead governed by R.273 and 274 RoP.
35. Service within the Contracting Member States, where Regulation 2020/1784 applies (R.270.1 RoP), shall be effected at the following place according to R.271.5(a) RoP: where the defendant is a company or other legal person, at its statutory seat, central administration or principal place of business within the Contracting Member States or at any place within the Contracting Member States where the company or other legal person has a permanent or temporary place of business (see also (R.278.2(a) and 3(a) RoP).
36. The wording of R.271.5(a) RoP strongly suggests that it only applies to service on companies or other legal persons with their statutory seats, central administration or principal place of business within the Contracting Member States. This is demonstrated by the choice of wording in the second part of the sentence where reference is made to “the company”. The reference to “the company” refers back to the first part of the sentence where such a company is defined, that is, a company with its statutory seat, central administration or principal place of business within the Contracting Member States.
37. The wording of the second part of R.271.5(a) RoP thus provides for places where service can be effected within UPC territory, as an alternative to service on a company with its statutory seat, central administration or principal place of business within the Contracting Member States. This provision thus provides for alternative places of service for a defendant that is domiciled within UPC territory. Service can then be made at any place within the Contracting Member States where the company or other legal person has a permanent or temporary place of business.
38. For service of a Statement of claim outside the Contracting Member States, the Registry may serve by any method provided by: (i) The law of the European Union on the service of documents in civil and commercial matters (Regulation 2020/1784) where it applies; (ii) The Hague Service Convention or any other applicable convention or agreement where it applies; or (iii) to the extent that there is no such convention or agreement in force, either by service through diplomatic or consular channels from the Contracting Member State in which the sub-registry of the relevant division is established (R.274.1(a) RoP).
39. The reference to Regulation 2020/1784 *where it applies* in R.274.1(a)(i) RoP stems primarily from the fact that not all EU Member States are Contracting Member States. Service in EU Member States that are not Contracting Member States will normally be carried out in accordance with Regulation



2020/1784. However, R.274.1(a)(i) RoP can also be understood to convey that there are substantive limitations to the applicability of Regulation 2020/1784 (see for example Article 1 of that Regulation).

40. R.274.1(b) RoP provides for service by any method permitted by the law of the state where service is to be effected or as authorized by the Court, where service in accordance with R.274.1(a) RoP could not be effected.
41. Section 3 of Part 5, Chapter 2 of the RoP deals with service by an alternative method. R.275 RoP provides that where service in accordance with Section 1 or 2 could not be effected the Court on an application by the claimant that there is a good reason to authorise service by a method or at a place not otherwise permitted by Chapter 2, may by way of order permit service by an alternative method or at an alternative place (R.275.1 RoP). Furthermore, on a reasoned request by the claimant, the Court may order that steps already taken to bring the Statement of claim to the attention of the defendant by an alternative method or at an alternative place is good service (R.275.2 RoP).
42. Article 15.2 of the Hague Convention provides that each Contracting State shall be free to declare that the judge may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled: a) the document was transmitted by one of the methods provided for in the Convention, b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document, c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.
43. The implication of Article 15.2 of the Hague Convention is that an attempt shall normally be made to serve the Statement of claim by any method provided for by the Hague Convention, before the Court authorises or orders service by an alternative method or at an alternative place (R.274.1(b) and R.275 RoP).
44. The Chinese Xiaomi companies and MediaTek are companies with registered offices outside the Contracting Member States and outside the EU. As said, R.271.5(a) RoP does not apply to these companies. The Court of Appeal is of the opinion that a defendant company in China or Taiwan can also not, as a starting point, be served a Statement of claim via a company within the same group in a Contracting Member State. Such a group company cannot automatically be seen as a statutory seat, central administration or principal place of business of a defendant company in China or Taiwan, nor a place where such defendant company has a permanent or temporary place of business. This view is supported by the principle of corporate separation prevalent in national law, which is also a source of law for the Court when interpreting the Rules of Procedure (Article 24(1)(e) UPCA).
45. In that respect the Court of Appeal notes that, although the absence of personal liability for shareholders is no general principle of company law applicable in all circumstances and without exception (judgment of the Court of Justice in Case C-81/09, *Idryma Typou*, ECLI:EU:C:2010:622, para 42), the company law principle of separation of liability is a common principle in the company law of the Member States, above all in matters of civil liability in connection with trading companies, such as companies with limited liability or joint stock companies (Opinion of AG Kokott in Case C-501/11 P, *Schindler Holding and Others v Commission*, ECLI:EU:C:2013:248, para 65, this was confirmed by the

Court of Justice, Case C-501/11 P, Schindler Holding and Others v Commission, ECLI:EU:C:2013:522, para 101).

46. This leads to the conclusion that service of the Statement of claim on the Chinese Xiaomi companies and MediaTek is governed by R.273 and R.274.1 RoP. Regulation 2020/1784 does not apply to them, which means that the conditions for applying R.274.1(a)(i) RoP are not met. The Hague Convention applies insofar as the Xiaomi companies with registered offices in China are concerned (R.274.1(a)(ii) RoP). When it comes to the Taiwanese company MediaTek, as rightly observed by the Local Division, Taiwan has not acceded to the Hague Convention. Service on MediaTek shall be made either by service through diplomatic or consular channels from Germany (the Contracting Member State in which the sub-registry of the Local Division is established) pursuant to R.274.1(a)(iii) RoP.
47. For the reasons set out, the Court of Appeal concludes that the Hamburg Local Division was right in rejecting Daedalus' request and in ordering Daedalus to submit to the Local Division the documents required for service on those companies in accordance with the Hague Service Convention and/or the requirements for diplomatic service, in particular the necessary translations into Chinese.
48. What has been said does not preclude the possibility of service by other or alternative methods at a later stage in the proceedings (R.274.1(b) and R.275 RoP).

#### *Costs*

49. No decision on the reimbursement of legal costs will be made in this appeal, since this order of the Court of Appeal is not a final order or decision, i.e. not an order or decision concluding the proceedings pending before the Court of First Instance.
50. The RoP provide that the principal decision on the obligation to bear the costs of the proceedings will be made in the final order or decision, in particular the decision on the merits (R.118.5 RoP), optionally in combination with an interim award of costs (R.150.2 RoP). The final decision is also the best stage of the proceedings to assess whether and to what extent a party can be considered unsuccessful within the meaning of Art. 69 UPCA.
51. The concept laid down in R.118.5 RoP that the principal decision on the costs of proceedings is made in the final order or decision is in line with R.150.1 RoP, according to which it is only after the decision on the merits that the successful party may seek a cost decision, meaning a decision for the determination of the costs to be borne by the unsuccessful party (R.150.1 RoP). This concept is also confirmed by the fact that the scale of ceilings for recoverable costs adopted by the Administrative Committee, which the Court must take into account when determining the reimbursement of representation costs, indicates ceilings based on the value of the proceedings as a whole (R.152.2 RoP).
52. As this concept also applies at appeal, R.242.1 RoP is to be interpreted to mean that if the decision of the Court of Appeal is not a final order or decision concluding an action, the Court of Appeal, in the case at hand, will not issue an order for costs in respect of the proceedings at first instance and at appeal. However, the outcome of the appeal must be considered when, in the final decision on the action at

hand, the Court determines whether and to what extent a party must bear the costs of the other party because it was unsuccessful within the meaning of Art. 69 UPCA.

ORDER

Daedalus' appeal is rejected.

Issued on 5 August 2024

Rian Kalden, Presiding judge and legally qualified judge

Ingeborg Simonsson, legally qualified judge and judge-rapporteur

Patricia Rombach, legally qualified judge