



Reference numbers:

App\_23094/2025

APL\_23093/2025

UPC\_CoA\_430/2025

## **ORDER**

**of the Court of Appeal of the Unified Patent Court  
concerning an application for suspensive effect and  
expedition**

**issued on 20 May 2025**

APPELLANT (DEFENDANT AND COUNTERCLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

**CHINT NEW ENERGY TECHNOLOGY CO., LTD.**

No.1 Jisheng Road, Jianshan New Zone – 314415, Haining City, Zhejiang Province – China

hereinafter: Chint,

represented by Jan Phillip Rektorschek (Taylor Wessing PartGmbB)

RESPONDENT (CLAIMANT AND COUNTERDEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

**JINGAO SOLAR CO., LTD.**

Jinglong Street, Ningjin County – 055550, Xingtai City – Hebei Province – China

hereinafter: JingAo,

represented by Christopher Maierhöfer (Bird & Bird LLP)

PATENT AT ISSUE

EP 2 787 541

PANEL AND DECIDING JUDGES

Panel 1:

Klaus Grabinski, president of the Court of Appeal

Peter Blok, legally qualified judge and judge-rapporteur

Emmanuel Gougé, legally qualified judge

LANGUAGE OF THE PROCEEDINGS

English

## IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Munich Local Division, dated 5 May 2025
- Reference numbers:
  - App\_ 18184/2025
  - UPC\_CFI\_425/2024
  - UPC\_CFI\_751/2024
  - ORD\_18305/2025

## FACTS AND REQUESTS OF THE PARTIES

1. JingAo is the proprietor of European patent 2 787 541 relating to a solar cell (hereinafter: the patent at issue).
2. On 19 July 2024, JingAo brought an infringement action against Chint and five other parties before the Munich Local Division of the Court of First Instance, requesting inter alia an order prohibiting – in summary – the alleged infringement of the patent at issue by Chint and the other defendants (ACT\_42211/2024 UPC\_CFI\_425/2024, hereinafter: the infringement action).
3. On 28 November 2024, Chint and the other five defendants filed a counterclaim for the revocation of the patent at issue in the infringement action (CC\_63422/2024 UPC\_CFI\_751/2024, hereinafter: the counterclaim for revocation).
4. On 15 April 2025, JingAo filed an application, requesting the Court to order Chint and the other five defendants to provide security for costs in the amount of € 200,000.
5. By order of 5 May 2025 (hereinafter: the impugned order), the Munich Local Division ordered Chint to provide security in the amount € 200,000 by 6 June 2025. The application was rejected in respect of the other five defendants. The impugned order provides that an appeal may be filed.
6. Chint lodged an appeal against the impugned order, requesting that the Court of Appeal
  - revoke the impugned order to the extent that Chint was ordered to provide security;
  - reject the request for security for costs in respect of Chint; and
  - order JingAo to pay the costs of the appeal.
7. In parallel to the lodging of the statement of appeal, Chint filed an application requesting the Court of Appeal to order that the lodging of the appeal have suspensive effect, or, in the alternative, to expedite the appeal proceedings. Chint argues that the provision of security before the order in the main appeal proceedings has been issued, is an undue burden. It also submits that the impugned order is based on incorrect conclusions and contradictory reasoning.
8. In this order, the Court of Appeal rules only on Chint's application for suspensive effect and expedition.

## GROUNDINGS FOR THE ORDER

9. Chint's application for suspensive effect and expedition is admissible but must be dismissed as unfounded for the following reasons.

### *No suspensive effect*

10. Pursuant to Article 74(1) of the Agreement on a Unified Patent Court (hereinafter: UPCA), an appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties. The Court of Appeal may therefore grant the application only if the circumstances of the case justify an exception to the principle that an appeal shall have no suspensive effect. It must be examined whether, on the basis of these circumstances, the appellant's interest in maintaining the status quo until the decision on its appeal exceptionally outweighs the respondent's interest. An exception to the principle that an appeal has no suspensive effect may apply, for instance, if the appealed order or decision is manifestly erroneous, or if the appeal becomes devoid of purpose in the absence of suspensive effect (Court of Appeal 19 June 2024, UPC\_CoA\_301/2024 APL\_33746/2024 App\_35055/2024 - ICPillar vs. ARM).
11. The Court of Appeal shares the Chint's view that it is unlikely that the Court of Appeal will issue its order in the appeal proceedings before the expiry of the time limit for complying with the impugned order, i.e. 6 June 2025. However, the appeal does not become devoid of purpose in the absence of suspensive effect. If Chint provides the security and the impugned order is subsequently revoked by the Court of Appeal, Chint may release the security. Chint also failed to demonstrate that the provision of security before the order of the Court of Appeal has been issued constitutes an undue burden. The mere fact that Chint will have to make arrangements with banks and its internal finance department is not sufficient, taking into account that a suspension of the impugned order may cause delays in the proceedings before the Munich Local Division.
12. Whether the impugned order is based on incorrect conclusions and contradictory reasoning is a matter for the Court of Appeal to decide in its order in the main appeal proceedings. In any event, Chint has failed to demonstrate that the Court of First Instance's findings and considerations constitute *manifest* errors, i.e. factual findings or legal considerations that are clearly untenable even on the basis of a summary assessment (Court of Appeal 29 October 2024, UPC\_CoA\_549/2024 APL\_51838/2024 App\_53031/2024 - Belkin vs. Philips).

### *No expedition*

13. Under R. 9.3(b) of the Rules of Procedure of the Unified Patent Court (hereinafter: RoP), the Court may shorten any time period on a reasoned request by a party. In considering such a request, the Court must balance the interests of both parties while ensuring that the principles of due process are adequately taken into account (CoA 19 June 2024, UPC\_CoA\_301/2024 APL\_33746/2024 App\_35055/2024).
14. The interests put forward by Chint do not justify the expedition of the appeals at the expense of JingAo's legitimate interest in having the appeals dealt with within the timeframe provided for by the RoP. The mere fact that Chint will have to make arrangements with banks and its internal finance department and that it argues that the impugned order is based on incorrect conclusions and contradictory reasoning is not sufficient.

### *JingAo not heard*

15. The Court of Appeal decides without having heard JingAo, since the Court of Appeal must decide on an application for suspensive effect without delay (R. 223.3 RoP) and the outcome is in favour of JingAo.

ORDER

The application for suspensive effect and the request for expedition are rejected.

This order was issued on 20 May 2025.

Klaus Grabinski President of the Court of Appeal	
Peter Blok Legally qualified judge and judge-rapporteur	
Emmanuel Gougé Legally qualified judge	