



Local Division Munich
UPC_CFI_566/2024
UPC_CFI_39/2025

Order
of the Court of First Instance of the Unified Patent Court
Local Division Munich
issued on 14 April 2025

CLAIMANT

Syngenta Limited

Jealott's Hill International Research Centre, RG42 6EY, Bracknell, Berkshire – GB

represented by: Benjamin Grzimek, Dr. Jörn Peters, Aylin Cremers (Fieldfisher)
Prof. Dr. Aloys Hüttermann (Michalski, Hüttermann & Partner)
Dr. Filip Alois J. De Corte, Dr. Christopher Andrews (Syngenta Crop
Protection AG)

DEFENDANTS

- 1) Sumi Agro Limited**, Bürgermeister-Neumeyr-Str. 7 - 85391 - Allershausen – DE
- 2) Sumi Agro Europe Limited**, Bürgermeister-Neumeyr-Str. 7 - 85391 - Allershausen – DE

represented by: Gareth Williams (Marks & Clerk)
Johannes Heselberger, Dr. Axel B. Berger, Dr. Kerstin Galler (Bardehle
Pagenberg)

PATENT AT ISSUE

European patent n° 2 152 073

PANEL/DIVISION

Panel 1 of the Local Division Munich

DECIDING JUDGES

This order has been issued by the presiding judge Dr. Matthias Zigann acting as judge-rapporteur, the legally qualified judges Dr. Walter Schober and Tobias Pichlmaier and the technically qualified judge Xavier Dorland-Galliot.

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT-MATTER OF THE PROCEEDINGS

R. 37.2 RoP

Application for leave to change claim or amend case/pleading (RoP263) - App_15498/2025
UPC_CFI_566/2024

REQUESTS

Syngenta requests (brief dated 31 March 2025):

The Claimant respectfully requests the court to grant leave to amend its claim to the territories of the Republic of Poland, the Czech Republic and the United Kingdom in accordance with R. 263 RoP.

Sumi Agro requests (brief dated 14 April 2025):

- i. Syngenta's application for leave to amend its claim is dismissed; and
- ii. Syngenta pay Sumi Agro's costs of the application.

In the alternative, if the Court is minded to grant permission to amend the claim:

- iii. Sumi Agro file submissions in response to the amended claim by 31 July 2025, at the same time as its Rejoinder on infringement, Reply to the Defence on revocation and Defence to the Application to amend the patent;
- iv. The deadline for Sumi Agro to file its Rejoinder on infringement, Reply to the Defence on revocation and Defence to the Application to amend the patent is extended by two months to 31 July 2025; and
- v. Leave to appeal is granted.

ARGUMENTS OF THE PARTIES

Syngenta argues that that it has only been able to request the Amendment at this stage following the decision of the European Court of Justice in BSH Hausgeräte GmbH v. Electrolux

AB (C-3999/22), as it was “the general opinion that this Court was not competent to hear cases concerning the infringement of a Polish or Czech or UK part of the patent-in-suit” and that the “claimant therefore would very likely have had to bear the costs for a dismissal of the complaint for these three countries”.

Sumi Agro argues that Syngenta could have made the amendment with reasonable diligence when it started the proceedings in September 2024. The BSH decision did not break new ground with regard to the jurisdiction of national courts or the UPC to consider questions of infringement of foreign patents and there was nothing to preclude Syngenta from including the amendment in its original Statement of Claim prior to the decision, as litigants in other UPC cases did. Notably, the Advocate General in the BSH case issued opinions in February and September 2024 which largely foreshadowed the BSH decision.

GROUND FOR THE ORDER

On R. 37.2 RoP:

Both parties requested the Court to hear both the infringement action and the counterclaim for revocation. In the absence of any good reason to the contrary, the Panel decides to hear both.

On R. 263 RoP:

The amendment in question could not have been made earlier with reasonable diligence (R. 263.2.a RoP). As already held by the Court of Appeal, even if it was not impossible, Syngenta could not have been expected to include the non-UPC territories in the original statement of claim in the main proceedings according to the established case law following the ECJ decision in *GAT v Luk* (C-4/03) (UPC_CoA_169/2025 APL_ 9191/2025, nr. 23). The panel is of the opinion that Syngenta was not obliged to include the territories in question already in the original statement of claim on the basis of the opinions of AG Emiliou, as these opinions are not binding on the Court of Justice of the European Union and the legal uncertainty resulting from this is a good reason not to base procedural decisions on opinions of the AG.

As regards the adjustment of the timetable for the exchange of further written pleadings, the amendment will not unduly hinder Sumi Agro in the conduct of its case. The date for the interim conference has been set for 6 October 2025 and the date for the oral hearing has been set for 10 December 2025. Sumi Agrio has requested a two-month extension of the existing schedule. This will be granted.

Leave to appeal is not granted as the Court of Appeal has already ruled on the issues relating to the amendments triggered by the recent decision of the ECJ. As indicated above, only a case-by-case application of these principles is required in this case.

ORDER

1. The Local Division Munich will proceed with both, the infringement action and the counterclaim for revocation.
2. Parties as summoned to the interim conference on both via videoconference on 6 October 2025, 10.00 a.m., and the oral hearing in person on both on 10 December 2025, 9.00 a.m., Denisstraße 3 in Munich.
3. Syngenta's application for leave to amend its claim is granted.
4. The timetable for the exchange of further written submissions is adjusted as follows:
 - a. Sumi Agro 31 July 2025
 - b. Syngenta 01.09.2025
 - c. Sumi Agro 01.10.2025
5. Sumi Agro is to file submissions in response to the amended claim by 31 July 2025, at the same time as its Rejoinder on infringement, Reply to the Defence on revocation and Defence to the Application to amend the patent.
6. Parties are invited to suggest topics for the interim conference by 1 October 2025.
7. The written procedure will be closed on 1 October 2025.

INFORMATION ABOUT ORAL HEARING HELD IN COURT

The oral hearing shall be open to the public unless the Court decides to make it, to the extent necessary, confidential in the interests of one or both parties or third parties or in the general interest of justice or public order (R. 115 RoP).

INFORMATION ABOUT AUDIO RECORDING

The oral hearing shall be audio recorded. The recording shall be made available at the premises of the Court to the parties or their representatives after the oral hearing (R. 115 RoP).

INFORMATION ABOUT ABSENCE OR DELAY OF A REPRESENTATIVE

A decision by default may be given, upon request, against a party that was duly summoned but fails to appear at the oral hearing (R. 355.1 (b) RoP).

INFORMATION ABOUT DECISION BY DEFAULT

Should a party fail to comply with the present Order within the time period specified, a decision by default may be given in accordance with R. 355 RoP (R. 103.1, last subparagraph and .2 RoP).

UPC_CFI_566/2024
UPC_CFI_39/2025

INFORMATION ABOUT APPEAL IN CASE OF AN ORDER FALLING UNDER ART. 73(2)(B) UPCA

The present order may either - be the subject of an appeal by any party which has been unsuccessful, in whole or in part, in its submissions together with the appeal against the final decision of the Court of First Instance in the main proceedings, or - be appealed by any party which has been unsuccessful, in whole or in part, in its submissions at the Court of Appeal with the leave of the Court of First Instance within 15 days of service of the Court of First Instance's decision to that effect (Art. 73(2)(b) UPCA, R. 220.2, 224.1(b) RoP)

DETAILS OF THE ORDER

Order no. ORD_16126/2025 in ACTION NUMBER: ACT_53813/2024

UPC number: UPC_CFI_566/2024

Action type: Infringement Action

Related proceeding no. Application No.: 15498/2025

Application Type: Application for leave to change claim or amend case/pleading
(RoP263)

Done in Munich on 14 April 2025

Dr. Zigann Presiding Judge	
Dr. Schober Legally Qualified Judge	
Pichlmaier Legally Qualified Judge	
Dorland-Galliot Technically Qualified Judge	