



UPC Court of Appeal
UPC_CoA_86/2024
App_17640/2024

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 9 April 2024
concerning clarification of the date of service

HEADNOTE

In appeal proceedings, Chapter 2 – Service (Rules 270 – 279) of the Rules of Procedure (RoP) applies *mutatis mutandis*. Consequently, if during the proceedings at the Court of First Instance, Rule 271.1 RoP applied (in short: an electronic address for service was provided by the defendant or his representative) and/or a representative of the respondent accepted service on behalf of the respondent, then pursuant to R.271.2 RoP further service – not only in the proceedings at first instance, but also in appeal proceedings - shall be effected within the closed electronic system of the UPC Case Management System (CMS).

KEYWORDS

Service of the Statement of appeal and grounds of appeal

RESPONDENT / APPELLANT / DEFENDANTS IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE:

Panasonic Holdings Corporation,
hereinafter referred to as 'Panasonic'.
Represented by: Miriam Kiefer, Rechtsanwältin, Kather Augenstein

APPLICANTS / RESPONDENTS IN THE APPEAL / CLAIMANTS IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST

INSTANCE:

Xiaomi Technology Germany GmbH
Xiaomi Technology France S.A.S.
Xiaomi Technology Italy S.R.L.
Xiaomi Technology Netherlands B.V.
Odiporo GmbH
Shamrock Mobile GmbH
hereinafter jointly referred to as: 'Xiaomi'
Represented by: Dr. Corin Gittinger, Rechtsanwalt, Freshfields Bruckhaus Deringer Rechtsanwälte,
Düsseldorf

LANGUAGE OF THE PROCEEDINGS

German

DECIDING JUDGE:

This order has been issued by the judge-rapporteur Ms. Rian Kalden

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Date: 9 February 2024
- Order no. ORD_ 598181/2023 (in main proceedings App_597406/2023, UPC_CFI_223/2023) of the local division Mannheim

PATENT

EP 3 611 989

FACTS

Panasonic appealed from a procedural order of the Mannheim Local Division on the way service of the Statements of claim in the proceedings at first instance may be effected on parties (other than Xiaomi) who have their registered address in China and Hong Kong.

REQUEST

Xiaomi requests:

1. that the court declare or (informally) notify the parties that the appeal was not served until 3 April 2024 and that the deadline for a statement of response to the appeal therefore ends on 18 April 2024;

In the alternative,

2. to (retroactively) extend the deadline for a statement of response to the appeal until 12 April 2024;

In the further alternative,

3. to (retroactively) extend the deadline for a statement of response to the appeal to a reasonable extent, whereby it leaves the question of the reasonable extent to the discretion of the court;

Xiaomi requests in the further alternative,

4. to grant the defendants re-establishment of rights for the deadline for filing a statement of response to the appeal and to grant a reasonable time period, in any case until 12 April 2024, to substantiate the corresponding motion for re-establishment of rights pursuant to R.320 (3) RoP and to perform the necessary omitted acts pursuant to R.320 (4) RoP.

In substance, Xiaomi requests,

5. to dismiss the appellant's appeal and uphold the contested order of the Mannheim Local Division dated 9 February 2024;
6. order the appellant to pay the costs of the appeal proceedings.

POINT AT ISSUE

Date of service of the Statement of appeal and grounds of appeal.

REASONS

1. In appeal proceedings, Chapter 2 – Service (Rules 270 – 279) of the Rules of Procedure (RoP) applies *mutatis mutandis*. Consequently, if during the proceedings at the Court of

First Instance, Rule 271.1 RoP applied (in short: an electronic address for service was provided by the defendant or his representative) and/or a representative of the respondent accepted service on behalf of the respondent, then pursuant to R.271.2 RoP further service – not only in the proceedings at first instance, but also in appeal proceedings - shall be effected within the closed electronic system of the UPC Case Management System (CMS).

2. In the present proceedings, it has become clear that the CMS was wrongfully not configured to allow for service of the Statement of appeal and grounds of appeal pursuant to R.271.2 RoP, but was configured similar to the way service of a Statement of claim in proceedings at first instance may be effected in a situation where R.271.1 RoP does *not* apply because an electronic address for service was provided by the *claimant*. In those cases, an access code is sent which allows a representative of a defendant to access the case file and voluntarily accept service on behalf of the defendant within 14 days of receipt of that notification. If service is accepted voluntarily, the date of service is the date on which the representative accesses the CMS by using the access code.
3. The dashboard of the representative of Xiaomi showed a “Confirmation of service” task for the Registry, suggesting that service had not yet taken place. As a result, the representative of Xiaomi was not aware that a notification of service had already been sent. He also could not have been aware by looking into the case file in CMS, as a notification of service that is effected within the CMS is not stored in the documents folder (or otherwise visible or referred to elsewhere) in the CMS.
4. Assuming that service was delayed due to malfunctioning of the CMS, which had happened before repeatedly, on 2 April 2024, the representative enquired with the Registry when service was going to take place. The Registry responded by e-mail of 2 April 2024 that notification of service had already taken place on 13 March 2024, indicating that the Statement of appeal and grounds of appeal was deemed to be served on that date pursuant to R. 271.6 RoP. It only then transpired that the notification of service sent through the CMS had ended up unread in the deleted items folder of the representative’s mailbox.
5. When the representative of Xiaomi, after discovering this, subsequently accessed the CMS on 3 April 2024, using the access code as instructed in the notifications, in the CMS interface it was notified that when the representative would ‘check the box’ “I voluntarily accept service of behalf of [named respondent] in Case no. 10370/2024” (which he did), then “The date and time of service is when you lodge” (i.e. 3 April 2024). In addition, the CMS automatically generated Notifications of service, which stated: “On 03/04/2024, [named respondent] was served electronically via the case management system regarding case no. 10370/2024.”
6. Given the confusion as to whether service had taken place, caused by the wrong configuration of the CMS for service in appeal proceedings, in combination with the lack of visibility in the CMS that service had been effected as well as the conflicting messages about the date of service, the Court of Appeal clarifies and orders that the principles of due process and legal certainty under these circumstances require that the date on which service of the Statements of appeal and grounds of appeal has been effected on Xiaomi

must be considered to be 3 April 2024. Consequently, that Statement of response on behalf of Xiaomi must be lodged by 18 April 2024

ORDER

The service of the Statements of appeal and grounds of appeal on Xiaomi must be considered to have been effected on 3 April 2024. The date on which the Statement of response on behalf of Xiaomi must have been served is 18 April 2024.

Issued on 9 April 2024.

Rian Kalden, judge-rapporteur