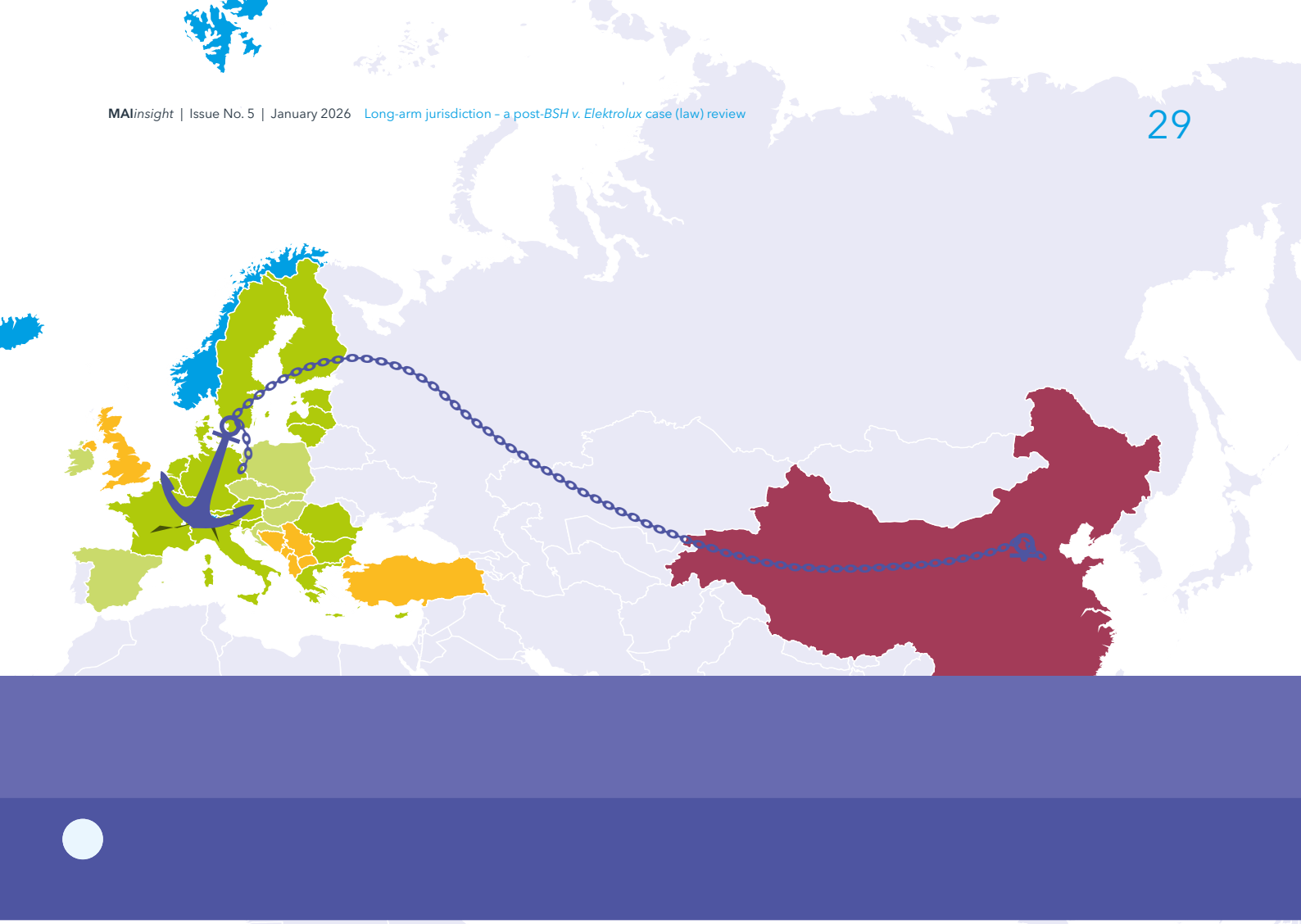
# Long-arm jurisdiction – a post-*BSH v. Elektrolux* case (law) review

## Testing the boundaries of international jurisdiction in respect of »foreign« patents and defendants



Last year, Vol. 2 of MAIinsight reported on landmark decisions of the Unified Patent Court (UPC) and the Court of Justice of the European Union (CJEU) on the so-called »long-arm« jurisdiction of courts of the Member States of the EU (referred to in the following as EU-MS), identifying the CJEU decision *BSH v. Electrolux*[1] as a game changer to international patent litigation which reopens European and even global cross-border patent litigation.[2]

This article now summarizes whether and how the patent litigation landscape has changed since then and what trends are emerging.

[1] CJEU of 25.02.2025 – C-339/22 – *BSH v. Electrolux*.
[2] MAI*insight* Vol. 2, 2025, p. 8-15.

## 1. Legal context

The so-called »Brussels I*bis* Regulation«[3] becomes relevant for any cross-border case in the EU having a link to more than one EU-MS, without being limited to exclusively intra-EU cases.[4] As an important pillar of European law on international civil proceedings, it provides, inter alia, a jurisdictional regime in Chapter II that is basically structured as follows:

**Article 4(1)** of the Brussels I*bis* Regulation provides, as a general rule and subject to other provisions of the same Regulation, that a defendant domiciled in an EU-MS shall be sued in the courts of that EU-MS. This general jurisdiction also applies to patent infringement proceedings and allows a patent proprietor to bring claims for infringement of patents valid in several countries before a single court in an EU-MS and to obtain comprehensive relief from a single forum.

**Article 7** of the Brussels I*bis* Regulation provides crucial exceptions to the universal jurisdiction of Article 4(1) of the Brussels I*bis* Regulation, allowing defendants to be sued in other EU-MS beyond their domicile, offering plaintiffs convenient forums for efficient cross-border litigation. Under Article 7(2) of the Brussels I*bis* Regulation relating to tort/delict matters, jurisdiction lies where the harmful event occurred or may occur.

**Article 8(1)** of the Brussels I*bis* Regulation allows a plaintiff to bring proceedings against multiple defendants in the courts of a Member State where any of them (the so-called **»anchor defendant«**) is domiciled if their claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

According to **Article 24(4)** of the Brussels I*bis* Regulation, in proceedings concerned with the validity of national patents or European patents (referred to in the following as EP patents), only the national courts of the EU-MS in which the patent is granted or validated shall have exclusive jurisdiction.

The Lugano Convention[5] contains corresponding provisions, thus extending the rules to some non-EU-MS, namely Norway, Iceland, and Switzerland (referred to in the following as **Lugano states**).

In addition, the provisions on jurisdiction of Chapter II of the Brussels I*bis* Regulation shall apply as appropriate to defendants domiciled in **third countries** (non-EU-MS and non-Lugano state) pursuant to Article 71b(2) of the Brussels I*bis* Regulation.

Finally, according to Article 71a of the Brussels I*bis* Regulation, the UPC is a »common court« and shall be deemed to be a court of an EU-MS. Consequently, the UPC has jurisdiction where a court of a Contracting Member State of the UPC (referred to in the following as UPC-CMS) would have jurisdiction under the Brussels I*bis* Regulation in a matter governed by the UPCA (Article 71b (1) of the Brussels I*bis* Regulation).

[3] 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 (recast), OJ L 351 20.12.2012, p. 1, recast of 26.02.2015.
[4] CJEU of 01.03.2005 – C-281/02 – Owusu, margin no. 31; see also Kalden, GRUR Patent 2023, 178, 182, margin no. 48.
[5] Convention on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, done at Lugano on 30 October 2007, including any subsequent amendments.

## 2. UPC case law post BSH v. Elektrolux

Previously, we discussed the decision *Fujifilm v. Kodak* of the Düsseldorf Local Division (LD) on long-arm jurisdiction rendered prior to *BSH v. Electrolux*, as well as two decisions of the Paris and Milan LDs issued shortly thereafter.[6] In the following, we address four further UPC decisions rendered after *BSH v. Electrolux*.

### Decision UPC_CFI_365/2023 of the Mannheim Local Division – *Fujifilm v. Kodak*

On 18 July 2025, the Mannheim LD of the UPC – having separated the UK part of the dispute in view of the CJEU's judgment in *BSH v. Electrolux*, which was not yet delivered at the time of the first oral hearing – issued the first UPC permanent injunction concerning the UK part of an EP patent. The Court held that it is, in principle, competent to rule on infringement of the UK part of the EP patent. In addition, and in this respect clearly in line with the CJEU, it may also rule on the patent's validity, to be examined as a preliminary question within the infringement proceedings, regardless of whether the defendant in the infringement action has brought revocation proceedings in the UK or not.

***The case:*** *FUJIFILM Corporation (Plaintiff) sued three German entities of Kodak (Defendants) for infringement of EP 3 511 174, in force in Germany and the United Kingdom (but lapsed in all other countries), before the Mannheim LD of the UPC.[7] The Defendants challenged the validity of the German part of the patent-in-suit by means of a counterclaim for revocation. Revocation (on a national basis) was not sought for the UK part of the patent-in-suit. With regard to the UK part, the Defendants filed a preliminary objection rejecting the international jurisdiction of the UPC. The Court separated the proceedings with regard to the UK, waiting for the decision BSH v. Electrolux of the CJEU which had not been delivered by the end of the oral hearing on 11 and 12 February 2025. Regarding the German part of the patent-in-suit, the Court rejected the counterclaim for revocation as unfounded and confirmed infringement.[8] The separated proceedings regarding the UK part of the patent-in-suit is the subject of the present decision.*

In line with *BSH v. Electrolux* and the case law of the Düsseldorf LD in the parallel proceedings[9], as well as with other case law of the UPC[10] after *BSH v. Electrolux*, the Mannheim LD's key findings are as follows:

- *»The UPC has jurisdiction to decide upon the infringement of the UK part of a European Patent. However, the UPC does not have jurisdiction to revoke the validated national part of a European Patent in relation to the United Kingdom with erga omnes effect (following ECJ, judgement of 25 February 2025, C-339/22, BSH Hausgeräte).« (headnote 1)*

- *»The defendant in an infringement action before the UPC, which relates to the UK part of a European bundle patent, is allowed to raise an invalidity defense without being obliged to file a national action for revocation in the UK. The UPC will then assess the validity as a mere prerequisite for infringement (following Local Division Dusseldorf, decision of 28 January 2025, UPC_CFI_355/2023). The outcome of the infringement action before the UPC has inter partes effect only.« (headnote 2)*

- *»In the absence of a pending national revocation proceeding in the UK, there neither is a reason to stay the infringement proceeding before the UPC, nor to make the decision conditional upon the validity of the UK part of the European patent.« (headnote 3)*

Regarding the validity of the UK part of the patent-in-suit, the Court found it valid – as a prerequisite for finding for infringement – for the same reasons for which the counterclaim for revocation directed against the German part had been rejected (margin no. 26). In line with *BSH v. Electrolux* and as a consequence of headnote 1, the decision about the validity of the UK part of the EP only had effect between the parties, i.e., *inter partes*.

[6] Vol. 2 of MAI*insight,* p. 14.
[7] Parallel proceedings relating to another EP patent were initiated by FUJIFILM before the Düsseldorf LD of the UPC and were decided even before the CJEU's decision in *BSH v. Electrolux*, cf. Düsseldorf LD, UPC_CFI_355/2023, deci-sion of 28.02.2025 (reported in Vol. 2 of MAI*insight*, p. 10-11).
[8] Mannheim LD, UPC_CFI_365/2023, decision of 02.04.2025.
[9] Cf. footnote 7.
[10] Paris LD, UPC_CFI_702/2024, order of 21.03.2025 – IMC Créations v. Mult-T-Lock; LD Milan, UPC_CFI_792/2024, order of 08.04.2025 – *Dainese v. Alpinestars.*

**Final Order UPC_CFI_387/2025 of the Hamburg Local Division – *Dyson v. Dreame***

In its final order issued on 14 August 2025 underlying an application for provisional measures, the Hamburg LD addressed the question whether an authorized representative of a non-EU manufacturer can be considered an infringer and dealt with the so-called **anchor defendant** in terms of Article 8(1) of the Brussels I*bis* Regulation.

***The case:*** *Dyson Technology Limited (Applicant) requested a preliminary injunction for alleged infringement of EP 3 119 235 relating to an attachment for a hair care appliance in all UPC countries and Spain against*

- ***Defendant 1)****: Dreame International Limited, HongKong, operator of almost all relevant country-specific websites, including Spain, at which the alleged infringing products were available for sale;*
- ***Defendant 2)****: Teqphone GmbH, official German distributor for Defendant 1), operator of the German Dreame website and owner of a retail store in Frankfurt;*
- ***Defendant 3)****: Eurep GmbH, the »EU representative« (Authorized Representative for non-EU manufacturers) of Defendant 1), located in Germany;*
- ***Defendant 4)****: Dreame Technology AB, Sweden, Swedish affiliate to Defendant 1) and operator of the Swedish Dreame website, having a retail store in Stockholm.*

*The Applicant claimed that Defendant 3) must be considered an infringer since without them it would not be possible for Defendant 1) to legally sell any products within the EU market; at least, Defendant 3) was an intermediary within the meaning of Article 63 UPCA. Further, the Applicant was of the opinion that international jurisdiction was given, arguing that both Defendants 2) and 3) served as »anchor defendants« for Defendant 1) with respect to the infringement in Spain.*

*Defendants argued, inter alia, that the Court lacked jurisdiction with respect to the alleged infringement of the Spanish part of the patent-in-suit, that there was no international jurisdiction with respect to Defendant 1), that the contractual relationship with Defendant 3) ended on 23 May 2025 and that Defendant 4) was solely responsible for the Swedish market.*

The Hamburg LD found that the UPC has international jurisdiction to decide upon infringement in the territories of **all UPC-CMS** for which the patent-in-suit is in effect:

Regarding **Defendants 2) and 3)**, this follows from Article 4(1) of the Brussels I*bis* Regulation as both are domiciled in Germany (margin nos. 39 and 40). With respect to **Defendant 1)**, the Court's international jurisdiction follows Article 7(2) in conjunction with Article 71b (2) of the Brussels I*bis* Regulation, regardless of the Defendant's place of residence (margin nos. 41 to 43). Finally, the international jurisdiction with respect to **Defendant 4)** follows Article 8(1) of the Brussels I*bis* Regulation. As Defendant 4) is part of the Dreame group and as the attacked embodiments are the same, the claims are closely connected in the meaning of said provision (margin no. 44).

In line with the CJEU's decision *BSH v. Electrolux*, the Court held that Defendants 1) and 3) are also subject to the UPC's international jurisdiction with respect to alleged infringing acts outside the UPC territory, here in **Spain** (margin nos. 45 et seqq.):

**Defendant 3)** as an **»Authorized Representative«** can be subject to an injunction for the infringement of the Spanish national part of the patent-in-suit as an **intermediary** in the meaning of the Enforcement Directive 2004/48/EC which is incorporated in Article 71(2) of the Spanish Patent Act and Article 63(1) 2nd sentence UPCA. The Court concluded that Defendant 3) is subject to the UPC's universal jurisdiction pursuant to Article 4(1) of the Brussels I*bis* Regulation at its domicile, including alleged infringing acts with respect to the Spanish national part of the patent-in-suit (margin nos. 49 to 56).

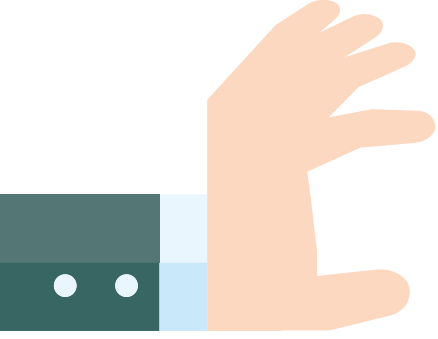
With respect to **Defendant 1)**, the Court held that the international jurisdiction regarding infringement in Spain can only be obtained by means of Article 8(1) of the Brussels I*bis* Regulation, applying the **anchor defendant principle** which requires a close connection with a

defendant who is domiciled in the country of the Court seized (here Germany) and thus subject to the UPC's universal jurisdiction and who acted allegedly in Spain. Here, the Court found that Defendant 3), as the Authorized Representative, can serve as an anchor defendant for Defendant 1), thus – and in accordance with Article 71b(2) of the Brussels I*bis* Regulation – applying Article 8(1) of the Brussels I*bis* Regulation also to co-defendants domiciled in third countries (margin nos. 57 to 64).

Conversely, the UPC's international jurisdiction does **not extend to Spain** with respect to **Defendants 2) and 4)**, since the Applicant did not provide any reliable facts that both are or were involved in any marketing of the attacked embodiments in Spain (margin no. 48). This is because establishing international jurisdiction for the alleged infringement of the national part of an EP patent outside of the UPC-CMS requires at least the plausible allegation of infringing acts by that party in the country in question.

*Indirectly, this judgment also raises a most interesting (indirect) question of highly practical relevance. That is, whether each Division of the UPC Court of First Instance is a separate national court for the purposes of the Brussels Ibis Regulation (interpretation of the Hamburg LD), or whether the Court of First Instance is to be considered a single court with the consequence that any Local/Regional Division is considered a »home court« in terms of Article 4(1) of the Brussels Ibis Regulation. It will finally be the CJEU to decide on this topic.*

**Note:** Both Applicant and Defendants appealed the decision (UPC_CoA_789/2025 and UPC_CoA_813/2025); the combined oral hearing took place on 22 January 2026. [11, 12]



**Procedural Orders UPC_CFI_191/2025 and UPC_CFI_192/2025 of The Hague Local Division – *Genevant v. Moderna***

***The case:*** *Plaintiffs Genevant Sciences GmbH (Switzerland) and Arbutus Biopharma Corp. (United States) filed two separate infringement proceedings, each concerning different European patents, against 15 entities of the Moderna group, based in the US (2), Belgium, Denmark, Sweden, Switzerland, Portugal, Norway, Poland, Netherlands, the UK, Italy, Spain, France, and Germany (Defendants). Defendants argued, inter alia, that the Court lacked international jurisdiction for Moderna Norway, Spain, and Poland, which are located in non-UPC-CMS, and had no local jurisdiction to hear the case against Moderna Spain, Germany, France, Italy, Belgium, Denmark, Sweden, Norway, Portugal, and Poland, because these Defendants are neither domiciled nor accused of infringing acts in the Netherlands. In addition, the Court at least lacked long-arm jurisdiction for allegedly infringing acts outside the UPCA territory allegedly committed by Moderna US, Switzerland, Spain, Norway, UK, and Poland. In addition, Defendants filed a counterclaim for revocation in both proceedings.*

*On 23 May 2025, the Judge Rapporteur issued a combined procedural (preliminary objection) order in both cases according to which the decision concerning long-arm jurisdiction with respect to Defendants based in the US, Switzerland, Spain, Norway, the UK, and Poland will be dealt with in the main proceedings. All other objections regarding the jurisdiction of the LD The Hague were dismissed. Defendants filed a request for review of this order under Rule 333 RoP. The full panel issued a second procedural order dated 18 August 2025 confirming the preliminary objection order.*

The Court accepted **international jurisdiction** with respect to Moderna Spain and Poland on the basis of Articles 7(2) and 8(1) of the Brussels I*bis* Regulation in conjunction with Article 71b(1), (2) of the Brussels I*bis* Regulation, and with respect to Moderna Norway on the basis of corresponding provisions of the Lugano Convention. For establishing international jurisdiction, Plaintiffs sufficiently substantiated – and Defendants did not contest regarding Norway – that Moderna Spain, Moderna Poland, and Moderna Norway

[11] The decision of the Court of Appeal had not yet been published at the editorial deadline.
[12] On 15.09.2025, Dyson initiated the main proceedings (UPC_CFI_851/2025), also against further defendants Cell-com Ltd. and Dreame Technology Netherlands BV.

allegedly infringe the patents-in-suit in their home countries jointly with Moderna Netherlands, who serves as **anchor defendant**, which is sufficient for jurisdiction of the UPC pursuant to Article 8(1) of the Brussels I*bis* Regulation (or Article 6(1) of the Lugano Convention).

Further, the LD The Hague confirmed its **local competence** to hear the cases of all Defendants based on Article 33(1)(b) UPCA, which provides that in case of multiple defendants, the LD hosted by the UPC-CMS where one of the defendants has its residence is competent to hear the case, provided that the defendants have a commercial relationship and the action relates to the same alleged infringement. According to UPC case law, a commercial relationship is to be considered if the defendants belong to the same group of legal entities and have related commercial activities aimed at the same purpose.[13] Both requirements are met in the present case.

As regards the UPC's **long-arm jurisdiction** for acts outside the UPC territory, the outcome of the oral hearing in the main proceedings must be awaited. For now, both cases are still in the written phase.

### Decisions UPC_CFI_386/2024 and UPC_CFI_610/2024 of The Hague Local Division – *HL Display v. Black Sheep Retail Products*

Another decision covering non-UPC-CMS Lugano states and third countries, regarding the latter based on *inter partes* validity findings, was issued by the LD The Hague on 10 October 2025.

> ***The case:*** *HL Display (Plaintiff) sued Black Sheep Retail Products domiciled in the Netherlands (Defendant) for infringement of EP 2 432 351 relating to a system for securing shelf accessories to a shelf, in force in UPC-CMS (The Netherlands, France, and Germany), EU-MS, but non-UPC-CMS (Ireland and Poland), Lugano states (Norway, Switzerland) and third countries (UK, Liechtenstein). The Defendant challenged the validity of the patent-in-suit with a counterclaim for revocation, i.e., regarding the UPC-CMS, and clarified that the same arguments were to be considered a defense in relation to non-UPC-CMS. Apart from that defense, no revocation action had been instituted in any of the non-UPC-CMS.*

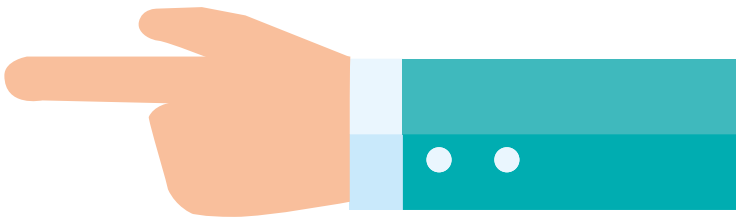
As to international jurisdiction, competence of the Court was confirmed, given that the Defendant is domiciled in the Netherlands. In application of *BSH v. Electrolux*, this also applies to the long-arm jurisdiction of the Court regarding countries outside UPC territory, notably Ireland, Poland, Norway, Switzerland, the UK, and Liechtenstein, where the patent is in force (margin no. 5.1).

The Court assumed competence for hearing the **infringement claims regarding all countries to which the European patent-in-suit relates, even if they are non-UPC-CMS**. Regarding other EU-MS or Lugano states, however, the Court had to evaluate whether there is a serious, non-negligible chance that the competent national court will invalidate the patent. Regarding third countries, the Court may make an *inter partes* decision on validity (margin no. 5).

Accordingly, the Court dismissed the counterclaim for revocation for the UPC-CMS in which the patent-in-suit is in force. For the EU-MS in which the patent-in-suit is in force, but which are non-UPC-CMS, and Lugano states, the Court found there is no serious, non-negligible chance the patent will be revoked by the competent national court. Equally, for the UK and Liechtenstein, neither EU-MS nor Lugano states and thus third countries, the Court held *inter partes* that the respective national parts of the patent-in-suit are valid (margin no. 10.3.1).

Finding the patent-in-suit to be infringed, both directly and indirectly, the Court granted permanent injunctive relief covering all states in which the patent-in-suit was in force.

Here, the handling stipulated by *BSH v. Electrolux* was implemented by the LD The Hague in an unsurprising manner.



[13] Procedural order of 23.05.2025, margin no. 19; Munich LD, UPC_CFI_15/2023 of 29.09.2023; Paris LD, UPC_CFI_495/2023 of 11.04.2024.

# Extracts from the Brussels *Ibis* Regulation

### Article 4

(1) Subject to this Regulation, persons **domiciled in a Member State** shall, whatever their nationality, **be sued in the courts of that Member State**.

### Article 7

A person domiciled in a Member State may be sued in another Member State:

…

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur; …

### Article 8

A person domiciled in a Member State may also be sued:

(1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings; …

### Article 24 (4)

The following **courts of a Member State shall have exclusive jurisdiction**, regardless of the domicile of the parties:

…

**(4)** ***in proceedings concerned with the registration or validity of patents****, trademarks, designs, or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence,* ***the courts of the Member State in which the deposit or registration has been applied for, has taken place*** *or is under the terms of an instrument of the Union or an international convention deemed to have taken place.*

*Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973,* ***the courts of each Member State shall have exclusive jurisdiction in proceedings concerned with the registration or validity of any European patent granted for that Member State****.*

### Article 71b

The jurisdiction of a common court shall be determined as follows:

**(1)** ***a common court shall have jurisdiction where****, under this Regulation,* ***the courts of a Member State party*** *to the instrument establishing the common court* ***would have jurisdiction*** *in a matter governed by that instrument;*

**(2)** *where the defendant is not domiciled in a Member State, and this Regulation does not otherwise confer jurisdiction over him, Chapter II shall apply as appropriate regardless of the defendant's domicile.*

Application may be made to a common court for provisional, including protective, measures even if the courts of a third State have jurisdiction as to the substance of the matter; …

## 3. German national proceedings post *BSH v. Electrolux*

The CJEU's decision in *BSH v. Electrolux* is relevant not only to the UPC's international jurisdiction; it also affects – indeed, in particular– the jurisdiction of the national courts of the EU-MS. Since those courts are not limited in subject matter to EP patents, it is even possible, under Article 4 of the Brussels I*bis* Regulation, to assert foreign national patents.

German courts – specifically the Munich I Regional Court – have so far addressed BSH v. Electrolux in two cases: one concerns preliminary injunctions, and the other, still pending, involves for the first time national patents from third countries (the United States).

### Munich I Regional Court – *Bayer v. Formycon*

On 25 September 2025, relying on *BSH v. Electrolux*, the Munich I Regional Court for the first time granted a cross-border preliminary injunction covering 22 European countries. The proceedings formed part of a worldwide battle of Proprietor Regeneron and its Licensee Bayer against various generic companies and biosimilar manufacturers concerning EP 2 364 691, a patent covering a specific formulation of aflibercept, the active ingredient in Bayer's and Regeneron's blockbuster Eylea, an ophthalmic drug used to treat wet agerelated macular degeneration and diabetic macular oedema.

> ***The Case:*** *In July 2025, Bayer, in its capacity as exclusive Licensee, and another exclusive Sublicensee (Applicants) applied for two preliminary injunctions alleging infringement of the patent-in-suit under the doctrine of equivalents against biosimilar manufacturer Formycon and its distribution partner Klinge Biopharma (Defendants): one relating to the German part of the patent-in-suit (case ID: 7 O 9382/25) and the other relating to 30 other European countries where the patent-in-suit is in force (among them, Austria, Belgium, Bulgaria, Denmark, Finland, France, Greece, Ireland, Italy, Lithuania, Luxemburg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Czech Republik, Hungary, and Cyprus[14] (case ID: 7 O 9383/25). In the second, cross-border PI request, the Applicants relied on BSH v. Electrolux to ground the Court's jurisdiction. Earlier, on 26 June 2025, in a nullity action brought by Samsung Bioepis, also an aflibercept biosimilar manufacturer, the German Federal Patent Court (3 Ni 15/23 (EP)) had largely upheld the German part of the patent-in-suit.*

In its decision in the second case at issue here (7 O 9383/25), the 7th Civil Chamber of the Munich I Regional Court made noteworthy observations on several aspects, including two important assumptions:

- In application of *BSH v. Electrolux*, the Court based its comprehensive **international jurisdiction** on Article 4(1) of the Brussels I*bis* Regulation (margin nos. 30 to 32).
- Although the Court's **local jurisdiction** already followed from the fact that both Defendants had their registered offices within the Court's district, the Court additionally noted, by way of *obiter dictum*, that it would also have local jurisdiction over defendants whose registered office is in another German judicial district, i.e., anywhere in Germany, arguing that patent infringement proceedings are characterized by the so-called *»fliegender Gerichtsstand«* (the tort venue under the ubiquity principle) which also applies in cross-border matters. Therefore, in cases involving purely foreign matters, defendants whose general forum is in Germany may be sued before **any German Regional Court** competent to hear patent infringement actions (margin nos. 34 to 42).[15]
- According to the Court, the positive decision on validity of the German part of the patent-in-suit (that is not at issue here) is a strong indicator that the corresponding national parts of the patent-in-suit in other countries will stand in the same limited form. Since the Defendants have not advanced any further arguments in this respect, the **validity** of all 22 foreign parts of the patent-in-suit was **presumed** (headnote 2, margin nos. 43 to 46, 300).
- The Court confirmed infringement under the **doctrine of equivalents** across 22 European countries. It relied on its finding of infringement by equivalent means under German law in the parallel case concerning the German part of the patent-in-suit and on the **presumption** that the other jurisdictions follow the same legal standard – an assumption the Defendants, who bore the burden of proof, failed to rebut (margin nos. 24, 89 to 91, 151 et seqq.). Accordingly, the Court did not need to obtain expert opinions on the applicable foreign law.[16]

The decision is notably favorable for patent proprietors and could make Germany, especially Munich, a compelling venue for cross-border litigation, in particular for preliminary injunction proceedings. Whether the Court's expansive approach – especially the two assumptions regarding validity and infringement noted above – will be affirmed by the higher instances remains to be seen.

[15] As appeals contesting a first-instance court's jurisdiction are generally unavailable under German civil procedure, the 7th Civil Chamber's view is likely to stand for now.
[16] In its decision, the Court addresses each of the national laws concerned; it makes for highly instructive reading (margin nos. 171 to 272).

According to the authors' knowledge, this case is the first one in which infringement of the patent-in-suit in the »home country«, here in Germany, was not asserted. Rather, only long-arm jurisdiction was sought (and parallel proceedings concerning the German part of the patent-in-suit was lodged separately).

For completeness, it should be noted that Formycon has appealed the preliminary injunction and that, on 23 October 2025, the Munich I Regional Court issued, in proceedings on the merits, a permanent injunction against Formycon with effect in Germany and 19 other EU-MS.[17]

### Munich I Regional Court – *Regeneron v. Advanz Pharma*

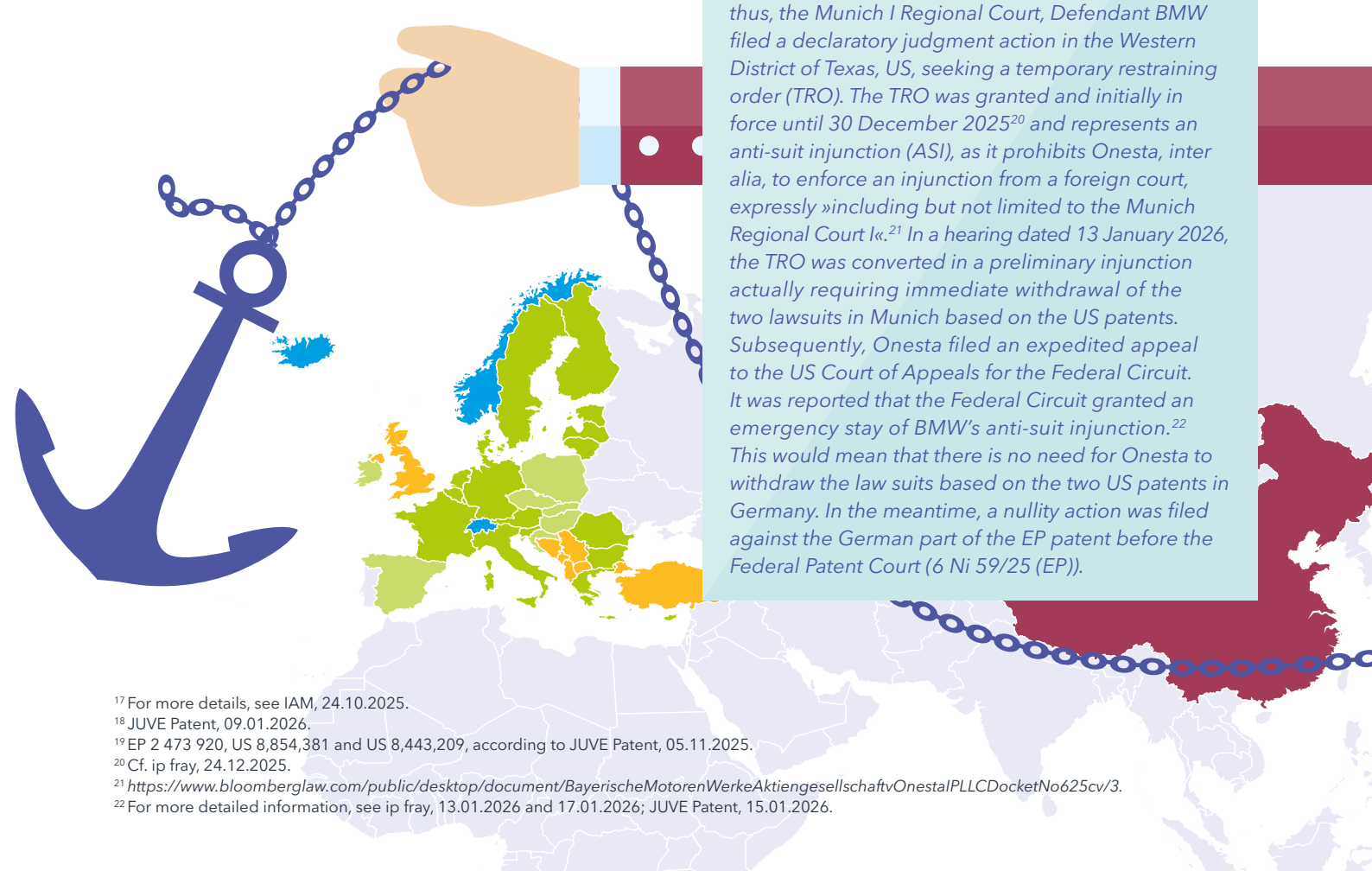
In another preliminary injunction proceeding concerning the same global dispute over EP 2 364 691, this time brought by the Proprietor Regeneron (Applicant) against Advanz Pharma (Defendant) (case ID: 7 O 15539/25), the Munich I Regional Court again, relying on *BSH v. Electrolux*, issued a cross-border preliminary injunction spanning 21 countries.[18]

### Munich I Regional Court – *Onesta v. BMW*

Unlike the UPC, which under Article 1 UPCA may hear only EP patent-related cases, national courts are not restricted in subject-matter competence. In light of the CJEU's reasoning in *BSH v. Electrolux*, it even appears possible under the Brussels I*bis* Regulation to sue a defendant domiciled in an EU-MS for infringement of a foreign national patent that is not merely another national part of an EP patent, thus enforcing a patent granted anywhere in the world before a national court of the EU-MS.

For the first time, it has now been tested whether the »long-arm« of a German court can indeed extend beyond the scope of an EP patent – here across the Atlantic to the US. Unfortunately, it looks as though this case will not be decided.

***The Case:*** *Onesta IP LLC, a non-practicing entity (Plaintiff), sued BMW AG (Defendant) before the Munich I Regional Court based on three patents concerning semiconductor technology: the German part of an EP patent and two US patents[19] (21 O 12768/25, 21 O 13056/25 and 21 O 13057/25). In an attempt to block the long-arm jurisdiction and, thus, the Munich I Regional Court, Defendant BMW filed a declaratory judgment action in the Western District of Texas, US, seeking a temporary restraining order (TRO). The TRO was granted and initially in force until 30 December 2025[20] and represents an anti-suit injunction (ASI), as it prohibits Onesta, inter alia, to enforce an injunction from a foreign court, expressly »including but not limited to the Munich Regional Court I«.[21] In a hearing dated 13 January 2026, the TRO was converted in a preliminary injunction actually requiring immediate withdrawal of the two lawsuits in Munich based on the US patents. Subsequently, Onesta filed an expedited appeal to the US Court of Appeals for the Federal Circuit. It was reported that the Federal Circuit granted an emergency stay of BMW's anti-suit injunction.[22] This would mean that there is no need for Onesta to withdraw the law suits based on the two US patents in Germany. In the meantime, a nullity action was filed against the German part of the EP patent before the Federal Patent Court (6 Ni 59/25 (EP)).*



[17] For more details, see IAM, 24.10.2025.
[18] JUVE Patent, 09.01.2026.
[19] EP 2 473 920, US 8,854,381 and US 8,443,209, according to JUVE Patent, 05.11.2025.
[20] Cf. ip fray, 24.12.2025.
[21] *https://www.bloomberglaw.com/public/desktop/document/BayerischeMotorenWerkeAktiengesellschaftvOnestaIPLLCDocketNo625cv/3.*
[22] For more detailed information, see ip fray, 13.01.2026 and 17.01.2026; JUVE Patent, 15.01.2026.

In line with the bifurcated system in Germany, the Munich I Regional Court is expected to assess whether the infringement proceedings are to be stayed, in view of the expectation of success of the nullity proceedings. However, this only applies to the lawsuit based on the German part of the EP patent.

BMW was sued at its Munich domicile per Article 4(1) of the Brussels I*bis* Regulation. As the EP patent-in-suit is in force in Germany and the UK, Onesta could have considered covering the UK via the »long-arm« as well. However, apparently, Onesta's focus is on the US patents and the potential US impact, in reaction to ongoing US litigation based on the US patents-in-suit.

For the US patents-in-suit, according to *BSH v. Electrolux* (see margin nos. 68 to 76 of the Decision), if the proceedings continue before the Munich I Regional Court, the Court would be free to decide on the validity of the US patents with *inter partes* effect, as Article 24(4) of the Brussels I*bis* Regulation only applies to EU members states. It remains to be seen whether and when Onesta indeed withdraws the lawsuits regarding the US patents pending before the Munich I Regional Court.

## 4. Conclusion and Outlook

In the meantime, long-arm jurisdiction has become established practice before the UPC and German national courts. However, second instance decisions have not been issued so far.

As the »anchor defendant« principle is increasingly applied to long-arm jurisdiction, the »long arm« now extends well beyond territorial limits and broadens the pool of potential defendants with the effect that more and more defendants can be reached in single proceedings. However, the very broad interpretation in this regard by the Hamburg LD of the UPC is yet to be confirmed by the Court of Appeal.

Following the Hamburg LD's approach regarding the »authorized representative« in *Dyson v. Dreame*, and assuming it is affirmed on appeal, the same reasoning could extend to other legally required EU actors – such as authorized representatives under the Medical Device/In Vitro Diagnostic Regulations (EU) 2017/745 (MDR) and (EU) 2017/746 (IVDR) or marketing authorization holders under Regulation (EC) 726/2004 –, exposing them to patent infringement injunctions (as intermediaries) and positioning them as anchor defendants in cross-border litigation against non-EU manufacturers. This is an important factor to be incorporated into future cross-border patent infringement strategy and risk planning.

It remains to be seen whether the UPC Court of First Instance is indeed to be regarded as a single court (as denied by the Hamburg LD). At the same time, the Munich I Regional Court made clear that, after having confirmed international jurisdiction, it has local jurisdiction even if the defendant is located in another German court district.

Finally, it remains an open – and particularly interesting – question how national courts of the EU-MS will deal with enforcing non-EP (foreign) patents. Given that the Onesta v. BMW proceedings in Germany are likely to end soon insofar as the US patents are concerned, a new claimant may soon emerge to put this question on the test.

**Heike Röder-Hitschke**
/ Counsel
/ Attorney-at-Law
/ Certified IP Lawyer
/ UPC Representative
/ LL.M. ›International Studies in Intellectual Property Law‹

**Dr. Michaela Weigel-Krusemarck**
/ Partner
/ German Patent Attorney
/ European Patent Attorney
/ UPC Representative
/ Physicist