



## Hamburg - Local Division

### UPC\_CFI\_54/2023 Procedural order of the Court of First Instance of the Unified Patent Court issued on 05 December 2023

Date of receipt of the complaint:

01/06/2023 DISPUTES

- 1) **Avago Technologies International Sales Pte. Limited**  
(party to the main proceedings - plaintiff) - 1  
Yishun Avenue 7 - 768923 - Singapore - SG  
Represented by Florian Schmidt-Bogatzky
  
- 2) **Tesla Germany GmbH**  
(defendant) - Ludwig-Prandtl-Straße 27-29 -  
12526 Berlin - DE  
Represented by Dr Marcus Grosch
  
- 3) **Tesla Manufacturing Brandenburg SE**  
(Defendant) - Tesla Str. 1 - 15537 Grünheide  
(Mark) - EN  
Represented by Dr Marcus Grosch

#### STREITPATENT

Patent number

Proprietor

**EP1612910**

Avago Technologies International Sales Pte. Limited

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#### APPLICANT

**Avago Technologies International Sales Pte. Limited**

(applicant) - 1 Yishun Avenue 7 -  
768923 - Singapore - SG

Represented by Florian Schmidt-  
Bogatzky

COURSE OF THE PROCEEDINGS:

In a statement dated 24 November 2023, the plaintiff requested that the court set the deadline for filing the reply to the statement of defence and the deadline for filing the response to the counterclaim for a declaration of nullity.

It has claimed that it only received the defendant's statement of defence dated 2 October 2023 in the version originally marked as confidential on 9 October 2023 and that the version confirmed as confidential by the Local Chamber was only received on 8 November 2023. This version could then also have been transmitted to the group of recipients confirmed by the Local Chamber on the plaintiff's side.

By order dated 28 November 2023, the judge-rapporteur determined that the plaintiff's time limit for responding to the defendant's statement of defence begins to run from 8 November 2023.

MOTIONS OF THE PARTIES:

In support of its application for the court to set the time limit for filing the reply to the counterclaim for a declaration of nullity, the plaintiff further argued that it would be appropriate to allow the time limit for the reply to run concurrently with the time limit for the reply to the counterclaim, since knowledge of the content of the counterclaim for a declaration of nullity is also of decisive importance for the preparation of the reply.

The defendants objected to the determination of the deadline. They have argued that in such cases it would appear to be in the interests of the parties to decide on a case-by-case basis, based on the scope and thematic nature of the redactions, on the decisive date of service for the start of the time limit. The statements made in the original Statement of Defence II (non-confidential) of

The redactions contained in the statement of 2 October did not concern an integral part of the statement of defence. An application for an extension of the time limit for the reply to the action for annulment was not to be seen in the applicant's submission.

REASONS FOR THE ORDER:

1.

With regard to the determination of the plaintiff's reply period, reference is made to the procedural order of 28 November 2023. In addition, it should be pointed out to the defendant's objections that the plaintiff was only able to discuss the statement of defence with the confirmed group of recipients without any restrictions from 8 November 2023 onwards due to the defendant's request for confidentiality, even to the extent that less central elements of the defence were affected, with regard to which the request for confidentiality was not granted. With regard to, inter alia, the information on the technical implementation of the challenged embodiment (statement of defence under sub C.IV.3.c and Annex B 2), however, the request was granted pursuant to R. 262A VerfO. And this information is undoubtedly an integral part of the statement of defence, since the disputed use of the patent-protected teaching is the central object of the patent infringement action.

2.

With regard to the plaintiff's time limit for responding to the defendant's action for annulment, a concurrence with the time limit for replying must be ordered. It is true that the application for a

extension of the time limit does not expressly result from the wording of the application for determination of the time limit for replying to the action for annulment. However, according to the statement of grounds submitted to the court, the plaintiff reasonably requested that this time limit run concurrently with the time limit for the reply and thus, in substance, an extension of the time limit. This request had to be complied with, as such synchronisation not only appears to be economical in terms of the process, but is also necessary with regard to the right to be heard, as the content of the statement of defence, including the protected information contained therein, is important for the drafting of the reply to the action for annulment.

ARRANGEMENT:

The start of the plaintiff's time limit for replying to the defendant's action for annulment is set for 8 November 2023 in line with the time limit for replying.

DETAILS OF THE ARRANGEMENT:

Action No.: ACT\_463258/2023  
UPC number: UPC\_CFI\_54/2023  
Action type: Infringement Action  
Application No.: 589355/2023  
Application Type: Generic procedural Application

Issued in Hamburg on 05 December 2023

Legally qualified judge Dr.  
Schilling - Rapporteur -