



**Order of the Court of First Instance of the Unified Patent Court in the
main proceedings UPC_CFI_9/2023 concerning European patent 3 611
989**

**ACT_459771/2023
App_586381/2023 (Rule 333 VerfO) issued
on 11/12/2023**

Guiding principles:

1. A notification by the judge-rapporteur under Rule 20.2 RP that the objection is to be dealt with in the main proceedings cannot be challenged on appeal, nor can it be the subject of a review by the panel under Rule 20.2 RP. 333.1 VerfO can be made.
2. The judge-rapporteur and not the panel shall decide on inadmissible applications pursuant to Rule 333.1 of the Rules of Procedure.

Keywords:

Appeal; information; review by the adjudicating body

Applicant

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- 2) **Netgear Inc.** represented by
(Defendant in the main proceedings) - Stephan Dorn
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- 3) **Netgear International Limited** represented by Stephan
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Defendant

- 1) **Huawei Technologies Co. Ltd** represented by
(plaintiff in the main Tobias J. Hessel
proceedings) - Bantian Huawei
Base Longgang District
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CN

Patent in suit

| <i>Patent no.</i> | Proprietor |
|-------------------|-----------------------------|
| EP3611989 | Huawei Technologies Co. Ltd |

COMPOSITION OF THE BODY OF THE JUDGEMENT

Presiding judge and
Rapporteur

Matthias Zigann

legally qualified **judgeTobias**
Pichlmaier legally qualified judgeEdger **Brinkman**

This order was issued by the presiding judge and rapporteur Matthias Zigann.

PROCEDURAL LANGUAGE

German

SUBJECT OF THE PROCEEDINGS

Patent infringement

Here: Request pursuant to Rule 333 of the Rules of Procedure following a briefing of the rapporteur pursuant to Rule 22.2 VerfO

APPLICATIONS

The applicants (defendants in the main proceedings) apply,

to have the Judge-Rapporteur's order of 30 October 2023 (ORD_575956/2023), according to which the defendant's objection (App_577172/2023) is to be dealt with in the main proceedings, reviewed by the entire panel (Rule 333 UPC) and to decide directly on the defendant's objection under Rule 19 UPC pursuant to Rule 21.1 UPC.

The defendant (plaintiff in the main proceedings) requests the court to

reject the application,

In the alternative, it leaves it to the discretion of the panel to decide again on the date on which the objection will be dealt with by the entire panel.

FACTS OF THE CASE

The plaintiff claims against the defendants for infringement of European patent 3 611 989. The defendants filed an opposition under Rule 19 RP on 7 September 2023 (App_570172/2023). On 30.10.2023, the judge-rapporteur heard the parties pursuant to Rule 20.2 RP that the objection is to be dealt with in the main proceedings and that there is no appeal against this communication pursuant to Rule 21.1 RP. On 14 November 2023, the petitioners filed a request for review by the panel pursuant to Rule 333 RP with regard to this notification.

The applicants are of the opinion that such a review by the adjudicating body is open upon request in the present case.

The defendant does not share this opinion.

REASONS

The application must be rejected as inadmissible.

Pursuant to Rule 333.1 of the Rules of Procedure, procedural **decisions** or **orders** of the Judge-Rapporteur or the Presiding Judge shall be reviewed by the panel upon reasoned request of a party.

Pursuant to Rule 20.2 of the Rules of Procedure, the Judge-Rapporteur shall inform the parties that the objection is to be dealt with in the main proceedings.

Under Rule 21.1 RP, a **decision by the Judge-Rapporteur** to allow the objection may be appealed under Rule 220.1(a). An appeal against an **order** of the judge-rapporteur to reject the objection may only be lodged in accordance with Rule 220.2. Although the German wording does not differentiate in this respect, it refers to a "decision" in both cases. The English ("decision" v. "order") and French ("décision" v. "ordonnance") version of the provision do, however, make a distinction. It follows from this that the notice pursuant to Rule 20.2 RP is neither a decision to allow the objection nor an order to reject the objection.

It is clear from the provision that an appeal is only possible if a decision has been made on the objection. This is the case with a notification ("inform" or "informe") is not the case.

Rule 333.1 of the Rules of Procedure also provides that only decisions or orders of the judge-rapporteur are subject to review by the panel at the request of a party. Consequently, the scope of application of this rule is not applicable in the present case.

Rather, according to the clear and unambiguous wording and intention of the authors of the Rules of Procedure, neither a review by the panel at the request of a party nor the legal remedy of an isolated appeal should be possible against the judge-rapporteur's indication that the objection is to be dealt with in the main proceedings. This ensures that the judge-rapporteur is in a position to choose the most economical conduct of the proceedings. The defendant is required to submit arguments within the one-month objection period that could oppose the jurisdiction of the court or the chamber seised. The judge-rapporteur is free, after hearing the claimant, to decide on the objection immediately or to state that the objection will be dealt with as part of the decision on the merits. The second alternative offers the possibility of sparing the court's resources, in particular those of the other members of the panel, in the case of manifestly unfounded objections or objections which, even if they are well-founded, do not render the entire proceedings obsolete, and to postpone a written argument until the time of the decision on the merits.

Since the scope of application of Rule 333 is clearly not open, it is not the panel that has to decide on this inadmissible request, but the judge-rapporteur. This is because, in the event of a referral to the panel, the panel would have to deal with the arguments presented. The aim of procedural economy,

in particular the conservation of the time resources of the other members of the adjudicatory body, would thus be missed.

ARRANGEMENT

The application by the applicants (defendants in the main proceedings) dated 14 November 2023 pursuant to Rule 333 of the German Rules of Procedure is dismissed as inadmissible.

INSTRUCTIONS TO THE PARTIES AND THE REGISTER

The next procedural step is for the plaintiff to submit a reply. The deadline for this is two months after service of the statement of defence containing a counterclaim for annulment, i.e. 22 January 2024.

Decisions on the extension of the claim, the assignment of a technically qualified judge and the scheduling of the interim hearing and the main hearing are made in separate workflows.

Dr Zigann
Presiding judge and rapporteur

Matthias ZIGANN  Digitally signed by
Matthias ZIGANN
Date: 2023.12.11 10:17:11 +01'00'

DETAILS OF THE ARRANGEMENT

ACTION NUMBER: ACT_459771/2023
UPC number:UPC_CFI_9/2023
Action type: InfringementAction
Related proceeding no. Application No.: 586381/2023
Application Type: APPLICATION_ROP_333

INFORMATION ABOUT THE APPOINTMENT

This order cannot be contested in isolation. It can only be reviewed by the court of appeal together with the main decision.