



Paris local division

UPC_CFI_358/2023
PROCEDURAL ORDER
of the Court of First Instance of the Unified Patent Jurisdiction handed
down on 18 December 2023

PLAINTIFF (DEFENDANT in the main proceedings)

LAMA FRANCE

241 Rue du Companet - 69140 - Rillieux-la-
Pape - FR

Represented by Henri
BOURGEOIS

RESPONDING PARTY (APPLICANT in the main proceedings)

**HEWLETT-PACKARD DEVELOPMENT
COMPANY, L.P**

10300 Energy Drive, Spring, Harris
County, TX, 77389, USA - 77389 -
Harris County - US

Represented by Grégoire
DESROUSSEAUX

PATENT IN DISPUTE

<i>Patent no.</i>	<i>Owner</i>
EP2089230	HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P
EP1737669	HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P

DECISION-MAKING JUDGE

Judge-Rapporteur

Camille Lignieres

LANGUAGE OF PROCEDURE: French

ORDER

SUMMARY OF FACTS AND PROCEDURE

An infringement action was initiated by HEWLETT-PACKARD DEVELOPMENT COMPANY (hereinafter "Hewlett-Packard") against LAMA FRANCE (hereinafter "Lama") before the Local Division of Paris on October 11, 2023.

The statement of defence was served on Lama by registered letter received on 2 November 2023.

On 29 November 2023, LAMA's representative telephoned the Registry of the Paris Local Division to inform it of the technical problem he was encountering, namely the impossibility of correctly opening exhibits 36 and 40 appearing on the list of exhibits via the CMS. On the day in question, the Registry noted the problem.

In an email dated ¹ December 2023 sent to the representatives of the two parties, the Registry sent an email message to all the parties requesting Hewlett-Packard to return the said exhibit 36 by email.

By e-mail dated 4 December 2023, Hewlett-Packard's representative sent exhibit 36 to Lama's representatives, with a copy to the court registry.

At the same time, by application via CMS dated ¹ December 2023, Lama requested access to missing documents and an extension of the date of service or the time limit for replying to its statement of defence.

Hewlett-Packard was invited by the Judge-Rapporteur to submit its written comments within the 8-day time limit on the application of ¹ December 2023, and submitted them on CMS on 11 December 2023.

REQUESTS OF THE PARTIES

The applicant requests :

Concerning access to parts,

- that electronic copies of the two unreadable exhibits on the CMS (exhibits 36 and 40) be made accessible via the JUB's CMS, or at least that a copy of exhibit 36 be transmitted,

- that confirmation be given that the file named "PC 048 BIS EPO procedure EP669 free and partial translation" does indeed correspond to the document bearing the "PC n°48bis" stamp which was sent by registered letter.

- that all files bearing a name different from the nomenclature used on pages 267 to 272 of the statement of claim be filed with a name that removes all doubt and ambiguity or, in the alternative, explicit confirmation that despite the differences in nomenclature, the files do indeed correspond to the documents listed in the statement of claim, and that the applicant will subsequently refrain from any argument arising directly or indirectly from the uncertainty thus created.

Concerning the postponement of the date of service or the response period,

- that the time limits calculated from the date of service be extended to be calculated from the day on which the documents are made accessible in their entirety, i.e. from the day on which exhibit 36 is made accessible (rule 9.3(a) RPJUB).

In response, Hewlett-Packard opposes the claims, arguing that :

-the request for confirmation of exhibit 48bis is unfounded, as exhibit 48bis is a free and partial translation of exhibit 48, which contains exchanges with the EPO that are accessible to the public,

-the nomenclature of the documents in support of the statement of claim raises no doubt,

-exhibit 36 corresponds to the table of 5 Bureau Vallée Uprint cartridges with cloned heads and that this exhibit was appendix 16 attached to the letter sent by registered post with acknowledgement of receipt to Lama on 13 April 2023,

Hewlett-Packard added that, in any event, the request for access no longer served any purpose since exhibit 40 was one of the exhibits served by registered mail with the statement of defence and received by the defendant on November 2, 2023, and that exhibit 36 was again sent to the defendant's representative by email at the request of the judge-rapporteur on December 4, 2023.

REASONS

Nomenclature of the list of documents in support of the statement of claim

In the light of the statement of claim and the exhibits as listed in the schedule annexed to that statement of claim and in the CMS, the Court finds that there is no doubt or ambiguity as to the identification of those exhibits.

In particular, the Court notes that Hewlett-Packard has confirmed that the file "PC 048BIS" on CMS does indeed correspond to the document stamped "PC n°48bis" that was sent by registered letter.

Access to documents in support of the statement of claim and extension of time limits

Service of the statement of claim was effected in accordance with the provisions of R.271.4.

a) the Rules of Procedure of the Unified Patent Jurisdiction (hereinafter referred to as the "UPLR") by registered letter received by the court

dated 2 December 2023 insofar as it included the statement of claim and documents considered essential for an understanding of the subject matter and cause of action brought by Hewlett-Packard against Lama, i.e. documents no. 40, 40bis, 42, 44, 44bis and 47, as well as a letter of service containing the access code to the CMS on which it is not disputed that all the documents in support of the statement of defence had already been downloaded on the date of service of the statement of claim. The plaintiff was therefore not negligent, in light of the provisions of R. 13.2 RdP, and the service of 2 November 2023 must be considered to have been lawful.

On the other hand, although the defendant had been in possession of the CMS access code since 2 November 2023, he waited until 29 November 2023 (i.e. 4 weeks), without any particular justification, to discover that it was impossible for him to open two documents downloaded from the CMS, i.e. Exhibit 36 and Exhibit 40, and to inform the Registry of this technical problem.

Exhibit 40, which was considered essential to an understanding of the subject matter and cause of action, was communicated in paper form on 2 November 2023 with the service of the statement of claim. The problem invoked by the defendant relating to the impossibility of opening this exhibit on the CMS cannot therefore justify an extension of the time limit for submitting the statement of defence.

As regards exhibit 36, the Registrar of this Division was able to ascertain on 29 November 2023 that it was no longer possible to open it, and on ¹December 2023 she forwarded a message from the Judge-Rapporteur asking Hewlett-Packard to communicate this exhibit by email to the defendant, which was done by email in return, with a copy to the Registry, on 4 December 2023. An electronic copy of Exhibit 36 was therefore sent to the defendant on 4 December 2023. In addition, this exhibit was downloaded on 8 December 2023 via CMS under number 36bis and opened without difficulty.

In addition, it appears from the title alone of exhibit 36 ("Table of 5 Uprint BV cartridges with cloned heads for the 2022-2023 campaign"), which appears on the list of exhibits uploaded to the CMS by the plaintiff as soon as its action was registered and which was accessible to the defendant as of November 2, 2023, that it is an exhibit previously communicated by Hewlett-Packard in its letter by registered letter of April 13, 2023 in Appendix 16 (exhibit 33 from Hewlett-Packard).

Finally, the defendant gives no explanation as to why the failure to open exhibit 36 prevented him from preparing his defence.

The Court points out that the parties before the Unified Patent Court are aware that time limits are strictly limited and that they must be diligent in their representations so that the Court's operation is both fair and efficient, in accordance with the principles of the preamble to the Rules of Procedure, in Articles 2 and 4. Accordingly, the defendant cannot legitimately invoke its own negligence in that it did not open the documents in support of the statement of claim on the CMS until 4 weeks after the date on which the access code was communicated, in order to be granted its request for an extension of the statutory time limit of 3 months for submitting its statement of defence.

It follows that the rights of the defence were sufficiently respected in this case and there is no justification, in view of the reasons developed above, for granting the request for an extension of time limits on the basis of R. 9.3 a) RoP. The request in this respect will therefore be rejected.

The parties agree that the initial date for service of the statement of claim to be taken into

account is 12 November 2023.

defence within 3 months in accordance with the provisions of R. 23 RdP, i.e. before 12 February 2024.

ON THESE GROUNDS,

Dismisses all of LAMA FRANCE's claims,

Enjoins LAMA FRANCE to submit its statement of defence before 12 February 2024,

Declares that this order may be reviewed by the Chamber in accordance with the provisions of R. 333 of the Rules of Procedure and may be appealed in accordance with the provisions of R. 220.2 of the Rules of Procedure.

Given in Paris on 18 December 2023.

Camille Lignieres, Judge-Rapporteur.

CAMILLE CLEO GARROS  CAMILLE CLEO's digital signature
GARROS
Date : 2023.12.18 19:03:54 +01'00'

ORDER DETAILS

Procedural Order in ACTION NUMBER: ACT_578697/2023

UPC number: UPC_CFI_358/2023

Action type: Infringement Action

related proceeding no. Application

No.: 590796/2023 Application

Type: Generic procedural Application