



Action number:
UPC_CoA_549/2024
APL_51838/2024
App_53031/2024

order
of the Court of Appeal of the Unified Patent Court
of 29 October 2024
concerning an application for an order for suspensive effect

GUIDING
PRINCIPLE
:

1. According to R.223.2 RoP, the application for suspensive effect must contain (a) the reasons why the filing of the appeal should be given suspensive effect and (b) the facts, evidence and legal arguments put forward. This means that such an application must in itself enable the appellant to prepare his statement and the court of appeal to decide on this application, if necessary without further information. References to documents and documents in the first instance files are admissible, provided that the passages to which reference is made are sufficiently specific.
2. The suspensive effect may be ordered if the order against which the appeal is directed is manifestly erroneous. Whether there is an obvious violation of the law is assessed on the basis of the factual findings and legal considerations that are decisive for the first instance decision. If these findings or legal considerations already prove to be unsustainable in the summary examination to be carried out, the suspensive effect must generally be ordered. As a rule, this applies regardless of whether the contested judgement may prove to be correct with other findings or on the basis of other legal considerations.
3. A managing director of a patent infringing company represents this company. This company cannot therefore be a "third party" in relation to this managing director within the meaning of Art. 63 UPCA and Art. 11 of Directive 2004/48. Therefore, liability under Art. 63 para. 1 sentence 2 UPCA as an intermediary cannot arise solely from the function as managing director of a patent infringing company.
4. Pursuant to R.352.1 RoP, a security deposit must be ordered when the decision or order is issued.

KEYWORDS:

- Application for suspensive effect
- Middleman
- Order for the provision of security

APPELLANT AND CLAIMANT/DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

1. ██████████ ██████████ ██████████ Aschheim, Germany,
2. **Belkin GmbH**, Aschheim, Germany,
3. **Belkin International Inc.**, El Segundo, California, United States of America,
4. **Belkin Limited**, Wellingborough, Northamptonshire, United Kingdom,
5. ██████████ ██████████ ██████████ Wellingborough, Northamptonshire, Great Britain,
6. ██████████ ██████████ ██████████ Wellingborough, Northamptonshire, Great Britain,

(hereinafter for all in the singular: Belkin, for defendants 1, 5, 6 hereinafter: defendant directors, for defendants 2 to 4 hereinafter: defendant companies)

represented by: Attorney Dr Philipp Cepl, Attorney Dr Constanze Krenz, Attorney Dr Benedikt Hammerschmid, Attorney Julia Ortel, Attorney Dr Joschua Fiedler and Attorney Dr Carl Prior, DLA PIPER UK LLP Rechtsanwälte, Munich

APPELLANT/DEFENDANT/PLAINTIFF IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

Koninklijke Philips N.V.

(hereinafter referred to as Philips)

represented by: Lawyer Dr Tilmann Müller, Bardehle Pagenberg, Hamburg

LANGUAGE OF THE PROCEEDINGS

German

PANELS AND DECIDING JUDGES

Judicial body 2,

Rian Kalden, legally qualified judge and presiding judge Ingeborg Simonsson,

legally qualified judge,

Patricia Rombach, legally qualified judge and rapporteur

Alain Dumont, technically qualified judge

Uwe Schwengelbeck, technically qualified judge

CONTESTED ORDER OF THE COURT OF FIRST INSTANCE

□Date: 13 September 2024

□Action number of the Court of First Instance: ORD_598464/2023, ACT_583273/2023,
UPC_CFI_390/2023

PATENT IN DISPUTE

EP 2 867 997

FACTS AND APPLICATIONS OF THE PARTIES

1. The defendant in the appeal (hereinafter Philips) is suing Belkin for infringement of European patent EP 2 867 997 (patent in dispute) for injunctive relief, recall, information, damages and publication of judgement.
2. Defendants 2 to 4 are companies of the Belkin Group. Defendant 1 is the managing director of Defendant 2 and a director of Defendant 4. Defendants 5 and 6 are directors of Defendant 4.
3. On 10 March 2022, the defendant 2 filed an action for revocation against the patent in suit with the Federal Patent Court. The nullity action was dismissed with the (not final) judgement of 12 July 2024 rejected.
4. On 10 August 2019, Philips brought an action against the defendants 2 and 4 before the Düsseldorf Regional Court for infringement of the German part of the patent in dispute. By judgment of 20 March 2023 (case no. 4a O 49/22), the Düsseldorf Regional Court dismissed the action. The Düsseldorf Higher Regional Court dismissed the appeal against this judgement as inadmissible on 18 April 2024.
5. With application A.1 Philips applied to the local division (with regard to defendants 2 and 4 with the restriction formulated in application G that their acts in the territory of the Federal Republic of Germany are excluded) to order the defendants to refrain from offering, placing on the market, using or possessing the power transmitters for an inductive power transmission system specified in the application in the Federal Republic of Germany, Belgium, France, Finland, Italy, the Netherlands, Austria and Sweden, to offer, place on the market, use or either import or possess for the aforementioned purposes, insofar as the power transmitter uses chips for inductive power transmission other than those used by the [REDACTED] [REDACTED] [REDACTED] or companies affiliated with it were manufactured and/or sold or become.
6. At the oral hearing before the local division, the chairman gave a preliminary assessment of the state of the dispute regarding the interpretation and infringement of the patent in suit and further stated as follows:

"With regard to the revocation counterclaim, which is then to be considered, we would focus on the discussion of the argument of unauthorised extension. We have looked at the other arguments, i.e. lack of novelty etc., inventive step, but we don't see any need to discuss them now" (approx. minute 14.25 of the first audio recording).

In the further course of the hearing (approx. minute 2.37 of the third audio recording), Belkin's representative the following question:

"Mr Chairman, excuse me, please allow me to ask you about the legal situation. The fact is that both the Federal Patent Court and our submission are based on a narrower interpretation, i.e. the reference is also based on the regional court's interpretation, and D6 was not the subject of the reference. However, I understand you correctly that you still do not want to hear the prior art that was not the subject of the reference."
7. The presiding judge replied, "We will then subject that to an appraisal, yes."

8. In its main decision of 13 September 2024, the Munich local division granted the applications for injunctive relief, information, damages and publication of the judgement in respect of the defendant companies (the latter subject to compliance with the General Data Protection Regulation).
9. The defendant directors were convicted by the local division pursuant to subparagraph D,

"to refrain from exercising their services as managing directors or directors of defendants 2 and 4 in such a way that the acts listed under B.I (note: B.I describes the acts prohibited to the defendant companies) are carried out by defendants 2 and 4 outside the territory of the Federal Republic of Germany."
10. In all other respects, the local division dismissed the action. Belkin's requests for suspension and its counterclaims for a declaration of invalidity of the patent in dispute were dismissed.
11. Belkin is appealing against the conviction.

Applications by the parties

12. Belkin applied for:

order the suspensive effect of the appeal of 20 September 2024, Ref. 51838/2024, against the decision of the Munich local division of 13 September 2024, Ref. UPC_CFI_390/2023, ACT_583273/2023, ORD_598464/2023 pursuant to Art. 74 UPCA, R.223 RoP, in particular with regard to points B.I, B.II, B.III, and/or point D. of the operative part, whereby it is requested in this respect that the order of suspensive effect with regard to one or more of these paragraphs is requested, the application should not be granted in full.

In the alternative:

the enforcement of the decision of the Munich local division of 13 September 2024, ref. UPC_CFI_390/2023, ACT_583273/2023, ORD_598464/2023 pursuant to R.352 RoP vs. The amount of the security to be set is at the discretion of the court.

Further in the alternative:

to allow the enforcement of the decision of the Munich local division of 13 September 2024, Ref. UPC_CFI_390/2023, ACT_583273/2023, ORD_598464/2023 pursuant to R.352 RoP only against security in the amount of at least EUR 6,000,000.

13. Philips requests that the applications be rejected.

ARGUMENTS OF THE PARTIES

Belkin essentially summarises as follows:

14. The Munich local division had seriously violated Belkin's fundamental procedural rights with the contested decision.
15. The local division violated the principle of orality and the right to be heard and thus the right to a fair trial, as Belkin was not allowed to comment on the prior art and the question of novelty and inventive step at any time during the oral hearing. Belkin's representative would not have explicitly asked again if she had not been allowed to comment on the

prior art should have been negotiated. This was to be seen as an application for a hearing on the state of the art. The presiding judge had already made up his mind before the question was asked: "We therefore do not now consider it necessary to repeat in detail in open court any validity arguments that have been set out in the documents". Against this background, to demand that the word "request" be used is a formality, especially since it is not the task of the parties to "request" an oral hearing on evidently significant core questions of law, such as the state of the art.

16. The chairman's simple comment that the prior art was "not convincing" deprived Belkin of any opportunity to respond adequately to the board's concerns, since it had not even been specified where the problems were seen.
17. It is not acceptable that the local division understood the qualified reference of the Federal Patent Court with regard to the question of patentability as quasi anticipatory in itself, but did not assume a corresponding anticipation for the interpretation underlying the reference, which necessarily led to non-infringement. As an absolute minimum, the court's introduction should have specified which features in the prior art were considered to be undisclosed. This applied in particular with regard to D6 and D7, which had not even been recognised by the Federal Patent Court at the time of the oral hearing.
18. In particular, with regard to D7, there was no indication that the submission of new prior art was seen as an amendment to the action within the meaning of R.263 RoP, which is why Belkin was not able to make any further submissions in this regard.
19. Furthermore, it is apparent from the reasons for the decision that the decision on the legal validity of the patent is not based on the Board's own assessment, at least in part. The statements on the disclosure of the origin and the feasibility were taken verbatim from the judgement of the Federal Patent Court without this being made clear. It cannot be ruled out that the local division would have come to a different decision if it had assessed the legal situation.
20. The local division had not decided on several of Belkin's applications in the decision.
21. The local division had rejected Belkin's factual submission as an amendment to the action, but at the same time - despite Belkin's multiple late objections - had taken into account Philips' relevant submission on acts of use outside Germany, which had only been submitted in the Reply and which, measured against the standards applied to Belkin's submission, could not have been taken into account. The judgement was therefore not only obviously incomplete, as Belkin's complaint of delay had not been resolved. Rather, the gap led to a contradiction that could not be resolved, as the introduction of new factual submissions had been assessed differently.
22. The operative part of the contested decision, insofar as it concerns the defendant managing directors, is indeterminate and therefore not enforceable.
23. In addition, the decision regarding the conviction of the defendant managing directors goes beyond the applications of Philips and violates Art. 76 para. 1 UPCA. The court had sentenced the defendant managing directors as "intermediaries" within the meaning of Art. 63 para. 1 sentence 2 UPCA without a corresponding application by Philips. Liability as an intermediary is not a minus, but a different subject matter of the dispute and therefore an aliud to the conviction requested by Philips pursuant to Art. 63 para. 1 sentence 1 UPCA.

24. In this respect, the decision is also manifestly incorrect. The defendant managing directors could not be intermediaries under Art. 63 para. 1 sentence 2 UPCA simply because the company was not a third party in relation to its managing director within the meaning of this provision.
25. The challenged decision is contrary to elementary principles of European law and ignores the scope of the res judicata effect of the judgement of the Regional Court of Düsseldorf with regard to the third defendant. The question arises as to the extent of the res judicata effect pursuant to Art. 36 Brussels I Regulation. It is undisputed that the proceedings here concern the identical contested embodiments, the identical patent in suit and the identical form of distribution via the website www.belkin.com/de, which was also the subject of the German proceedings. The local division had linked the responsibility of defendant 3 solely to the fact that it was the domain owner and was named in the terms and conditions on the website. After the Court of Justice of the European Union had recently ruled that terms of the Brussels I Regulation should not be interpreted restrictively (judgment of 8 June 2023 - Case C-567/21), it would in any case have been necessary for the Court to clarify whether the narrow understanding of Art. 36 Brussels I Regulation was in conformity with European law. In any case, the Court of Appeal also opted for a broad interpretation for the question of suspension (CoA, procedural order of 17 September 2024, UPC_CoA_227/2024).
26. The local division had not justified "its application" of Art. 36 Brussels I Regulation and had not ruled on the application.
27. It is unclear what the background is to the local division's comment on page 18 of the grounds for the decision, according to which Belkin did not assert the conflicting res judicata effect of the Higher Regional Court judgement beyond Art. 36 Brussels I Regulation. Irrespective of the fact that the assertion was incorrect, the local division had to take into account the conflicting res judicata effect of other decisions of its own motion, which it had obviously not done.
28. Moreover, the local division violated the primacy of European Union law in the contested decision by stating that a stay under Art. 30 Brussels I Regulation was not appropriate because Art. 34 UPC Agreement grants exclusive jurisdiction to the UPC.
29. In its decision in the German nullity proceedings, the Federal Patent Court chose an interpretation of the patent on the basis of which an infringement would be ruled out, which is why there is a considerable probability that the judgement will be overturned in appeal proceedings.
30. The local division had never held an interim hearing. A procedural order within the interlocutory proceedings had not been issued at any time. In particular, Belkin had not been informed until the oral hearing that the Board had thought that it would not hear the prior art or that parts of the submission could be rejected as late.
31. The balancing of interests also speaks in favour of Belkin and the requested order of suspension. Philips is primarily pursuing a monetary interest that can be compensated regardless of the outcome of the appeal proceedings and, in view of the IPC policy of the standardisation organisation on which the Qi standard is based (WPC), is in any case obliged to grant a licence. Belkin, on the other hand, would suffer irreparable damage as a result of the enforcement. In particular, enforcement against the defendant managing directors could put them in an existentially threatening situation, especially if it were required (which is unclear) that they could no longer exercise their office.

32. In any case, any interest on the part of Philips was sufficiently addressed by Belkin's right to avert.
33. In any case, however, the enforcement of the judgement must be preceded by a substantial security deposit.

Philips essentially summarises as follows:

34. The UPC Agreement system does not require the parties to provide a comprehensive explanation of the facts of the case at the oral hearing in order for a decision on the merits to be issued, as can be seen from the provisions on the right to be heard and the principle of orality as well as the powers to conduct proceedings.
35. The principle of the right to be heard also does not justify a claim that the legal opinion of the court be disclosed before the decision is made and that the parties can comment on this. An exception can only apply if the court bases its decision on a legal point of view that even a conscientious and knowledgeable party to the proceedings would not have to reckon with, even taking into account the variety of justifiable legal opinions.
36. In the introduction, the local division had prioritised the matter, which was only provisional. It had not expressed its intention to reject any further submissions. Belkin had also not requested to be allowed to make oral submissions on certain further aspects.
37. In his introduction, the chairman expressly pointed out that the submission of citations D7 and D8 was too late with regard to the main application and that Belkin had not explained why the citations had not been submitted earlier. Philips had also objected to the delay in the reply to the nullity counterclaim of 11 April 2024 (see p. 10 et seq.). Belkin also had the opportunity to make submissions on the requirements of R.263 RoP and did so in its reply to the application for amendment of the patent of 13 May 2024.
38. The local division implicitly rejected Belkin's complaint that all submissions that went beyond Germany were late by referring to the relevant submissions in the main decision. In this respect, the case was also completely different from D7.
39. The operative part was also sufficiently specific with regard to the defendant managing directors. It was also possible for them to comply with the cease and desist order.
40. Moreover, the objection of impossibility would be open to Belkin in the context of compulsory enforcement, even without the need for suspensive effect.
41. The local division did not award more than was requested. The application also implicitly contains the application, as a minus, to issue an injunction against the defendant managing directors merely prohibiting them from continuing to provide their services as managing directors or directors of the defendant companies in such a way as to enable them to continue the infringement.
42. Contrary to Belkin's opinion, the liability of the defendant managing directors as intermediaries does not constitute a different subject matter of the dispute than the action sought. With regard to the

There is no divergence between the facts of the case, as the same actual act of Belkin, namely the patent infringement, is involved.

43. In this respect, there is also no evident inaccuracy in the judgement. Contrary to Belkin's view, the services of the managing directors within the meaning of Art. 63 (1) sentence 2 UPCA are "utilised by the company for the purpose of infringing a patent". This is because the instructions given by the managing directors of a company to their employees who are bound by instructions constitute the very basis for the possibility of patent infringement by the company.
44. As the local division had correctly stated, the judgement of the Düsseldorf Higher Regional Court could not be recognised with regard to defendant 3. The liability of defendant 3 is a liability that is independent of the liability of defendants 2 and 4. This is a considerable difference to the liability of the defendant managing directors as intermediaries of defendants 2 and 4 assumed by the local division.
45. There was no violation of the right to be heard with regard to Belkin's application for a referral to the European Court of Justice. Belkin had only applied for this in the alternative in the event that the court would not recognise the judgment of the Düsseldorf Higher Regional Court. However, the local division had recognised the judgment with regard to the defendant managing directors. The fact that the judgement was not recognised with regard to the liability of the third defendant was irrelevant, as Belkin's request for referral related to the liability of the defendant managing directors.
46. It should also be taken into account that the decision on the referral to the European Court of Justice is at the discretion of the local division, R.266.1 RoP, Art. 21 UPCA in conjunction with Art. 267 TFEU. The local division had exercised its discretion without error of law.
47. The Acteclair doctrine argues against a referral in the present case, as there is no reasonable doubt about the interpretation of the concept of res judicata and thus the recognition of judgments under Art. 36 Brussels I Regulation. According to the concept of res judicata under EU law, not only the operative part of the judgment but also the grounds on which the operative part is based are taken into account (ECJ, judgment of 15 November 2012, C-456/11 para. 40). Neither the judgement of the Regional Court of Düsseldorf nor the judgement of the Higher Regional Court of Düsseldorf contained any findings on the acts of infringement committed by the third defendant.
48. The local division had exercised its discretion to stay the proceedings under Article 30(1) Brussels I Regulation without error of law. The local division did not merely refer to Art. 34 UPC Agreement and the exclusive jurisdiction of the UPC Agreement, but also emphasised that the German nullity proceedings only concerned the German part of the patent in dispute, whereas the infringement and the legal validity of the Belgian, French, Finnish, Italian, Dutch, Austrian and Swedish parts of the patent in dispute were also at issue here. This is the difference to the decision of the Court of Appeal of 17 September 2024 (UPC_COA_227/2024). There, the proceedings had been stayed in particular because the two appeal proceedings only concerned the German part of the European patent. The subject matter of the dispute was therefore - in contrast to the present case - almost identical.
49. In addition, different auxiliary requests had been filed in the present proceedings and in the German nullity proceedings. This confirms once again that the subject matter of the proceedings is not almost identical and that a stay is not necessary.
50. Furthermore, Philips had a "special interest" in the decision on the infringement and cancellation counterclaim, as claims for damages had been asserted.

51. It should also be taken into account that there is no risk of contradictory decisions in the present case. Both the Federal Patent Court and the local division had confirmed the legal validity of the patent in dispute at first instance.
52. Finally, it could be assumed that the Court of Appeal would decide more quickly in the present proceedings than the Federal Court of Justice in the parallel German nullity proceedings, so that there was no reason to suspend the present legal dispute for reasons of procedural economy.
53. Belkin has not quantified any specific damages and has not presented any specific enforcement disadvantages that would not be recoverable even if the appeal were successful.
54. Belkin's application for a stay of execution against the provision of security has no legal basis. As an exceptional provision, R.352 RoP is to be interpreted narrowly. In any case, the application was late.
55. Therefore, the application for an order for security for enforcement pursuant to R.352.1 RoP was also late. No excuses for the delay had been submitted or were apparent. The application was also manifestly unfounded. Concrete enforcement damages were not submitted.

REASONS FOR THE ORDER

A. Main application

I. Admissibility of the application for suspensive effect

56. The application for an order of suspensive effect is admissible, in particular in accordance with Art. 74 UPCA, R.223.1 RoP.

II. Merits of the application for suspensive effect with regard to the defendant managing directors

57. The application for suspensive effect of the appeal is successful insofar as it concerns the enforcement against the defendant managing directors. In all other respects, the application must be rejected.

1. Requirements for the order of suspensive effect

58. According to Art. 74 para. 1 UPCA, the appeal has no suspensive effect unless the Court of Appeal decides otherwise upon a reasoned application by a party. The court of appeal can therefore only grant the application if the circumstances of the case justify an exception to the principle that the appeal has no suspensive effect. In doing so, it must be examined whether the appellant's interest in maintaining the status quo until the decision on his appeal outweighs the respondent's interest by way of exception (UPC Agreement Court of Appeal, order dated 18 January 2024, UPC_CoA_4/2024, App_100/2024 p. 5; order of 19 June 2024, UPC_CoA_301/2024, App_35055/2024, para. 7; Order of 19 August 2024, UPC_CoA_388/2024, APL_39884/2024, para. 6).
59. The order of suspensive effect may be considered in particular if the order against which the appeal is directed is manifestly erroneous (UPC Agreement Court of Appeal, order of 18 January 2024, UPC_CoA_4/2024, App_100/2024 p. 5; order of 19 August 2024,

UPC_CoA_388/2024, APL_ 39884/2024, para. 7) or the enforcement of the contested decision would render the appeal largely irrelevant (UPC Agreement Court of Appeal, order of 6 November 2023, UPC_CoA_407/2023, App_584588/2023; order of 2 May 2024, UPC_CoA_177/2024, APL_20002/2024 para. 10).

60. Whether there is an obvious violation of the law is assessed on the basis of the factual findings and legal considerations that underpin the first instance decision. If these findings or legal considerations already prove to be unsustainable in the summary examination to be carried out, the suspensive effect must generally be ordered. As a rule, this applies regardless of whether the contested judgement may prove to be correct with other findings or on the basis of other legal considerations.
61. Furthermore, the violation of fundamental procedural rights such as the principle of the right to be heard can also justify the order of suspensive effect if it cannot be ruled out from the outset that the court would have come to a different conclusion without the violation.
62. According to R.223.2 RoP, the application for suspensive effect must contain (a) the reasons why the appeal should be granted suspensive effect and (b) the facts, evidence and legal arguments put forward. This means that such an application must in itself enable the court of appeal to decide on this application, if necessary without further information. References to text passages in documents and documents in the first instance files are admissible, provided they are sufficiently specific.

2. *Conviction of the defendant managing directors*

63. Taking these principles into account, suspensive effect must be ordered insofar as the defendant managing directors have been ordered to exercise their services as managing directors or directors of the defendant companies in such a way that the acts prohibited to the defendant companies are carried out by them outside the territory of the Federal Republic of Germany (operative part D, hereinafter: injunctive relief). The same applies to the decision on costs and the permission to publish the judgement at the expense of the defendant managing directors.

a) Manifest error of law

64. The local division justified this injunction with regard to the defendant managing directors in the contested decision as follows: For defendant 1, the plaintiff had not shown own acts of use within the meaning of the case law of the ECJ. Defendant 1 had neither acted as a seller of his own products nor had he given the impression to the public that he was the person marketing the products at issue in his own name and for his own account. However, the defendant 1 could be claimed as an intermediary pursuant to Art. 63 para. 1 sentence 2 UPCA due to his function as managing director of the defendant 2 and director (managing director) of the defendant 4. As managing director and director (managing director), he had provided services in relation to defendants 2 and 4, which had been used by them to infringe the patent in suit. As managing director, he could also influence the infringement by issuing corresponding instructions to his subordinate employees. The local division made similar considerations for the other defendant managing directors.

65. Belkin rightly criticises this as a manifest error of law. There is no reasonable doubt that managing directors of a company cannot be held liable as intermediaries within the meaning of Art. 63 para. 1 sentence 2 UPCA solely on the basis of their function as managing directors.
66. A managing director of a patent infringing company represents this company. This company cannot therefore be a "third party" in relation to this managing director within the meaning of Art. 63 UPCA and Art. 11 of Directive 2004/48. Therefore, liability under Art. 63 para. 1 sentence 2 UPCA as an intermediary cannot arise solely from the function as managing director of a patent infringing company.

b) Balancing of interests

67. In view of the manifest error of law, the defendant directors' interest in maintaining the status quo prior to the order until the appeal is decided outweighs Philips' interest in enforcement.
68. The same applies insofar as the defendant managing directors were ordered to pay the costs of the legal dispute and insofar as Philips was permitted to publicise the decision in whole or in part in public media, in particular on the Internet, at their expense.

III. Order of suspensive effect in all other respects

69. Insofar as Belkin seeks an order to suspend the effect of the appeal in other respects, the application is unsuccessful.
70. In this respect, Belkin's submission does not indicate a violation of fundamental procedural rights (in particular the right to be heard and the right to a fair trial) or a manifest violation of rights. In particular, it is not apparent from the submission that Belkin was prevented in the oral hearing from also making statements on novelty and inventive step within the time frame granted to Belkin (see R.113.1 RoP), the appropriateness of which was not disputed. In this respect, it is not necessary to decide whether R.113.3 RoP would allow such a restriction from a factual point of view. Insofar as Belkin asserts that applications have not been decided, these have in any case been decided implicitly. The decision on the merits also does not suffer from a lack of reasoning justifying the suspensive effect.

B. Auxiliary applications

71. The auxiliary requests are unsuccessful.
72. There is no need to decide whether the court of appeal can also order the suspensive effect as a milder measure under a resolutive or suspensive condition of a security deposit. This would only come into consideration if the circumstances of the case justified an exception to the principle that the appeal has no suspensive effect. Such circumstances do not exist here, insofar as this is to be decided in the context of the auxiliary requests.
73. Pursuant to R.352 RoP, a decision or order may be made dependent on one party providing security to the other party. However, such security must be provided when the decision or order is issued. This follows from the wording of R.352.1 RoP, according to which a decision or order "may be made conditional" and from the systematic position in Chapter 10 ("Decisions and orders"). It is therefore not necessary to decide whether R.352 RoP also provides for the power to avert.

C. Deciding judges

74. The rapporteur referred the decision to the panel for decision in accordance with R.102.1 RoP.

ORDER:

- I. The suspensive effect of the appeal against the main decision of the Munich local division of 13 September 2024 (ORD_598464/2023, ACT_583273/2023UPC_CFI_390/2023) is ordered insofar as it allows enforcement against the defendants 1, 5 and 6.
- II. The further applications are rejected.

Issued on 29 October 2024

Date

2024.10.29

Rian Kalden

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Rian Kalden, legally qualified judge and presiding judge

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Simonsson

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Ingeborg Simonsson, legally qualified judge,

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Patricia Rombach, legally qualified judge and rapporteur

Alain
Marie J
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Signature

numérique de

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