Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC Court of Appeal
UPC_CoA_719/2024
App_62076/2024

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 21 November 2024
concerning an application for suspensive effect (R.223.4 RoP)

APPLICANTS AND DEFENDANTS IN THE MAIN PROCEEDINGS BEFORE THE CFI

1. **Magna PT B.V. & Co. KG**, Untergruppenbach, Germany
2. **Magna PT s.r.o.**, Kechnec, Slovak Republic
3. **Magna International France, SARL**, Biévres, France

hereinafter also referred to as "Magna"

all represented by: Klaus Haft, Attorney-at-law, Hoyng ROKH Monegier, Düsseldorf, Germany

Sabine Agé, Caroline Levesque, Lonni Bas, Laurène Borey, Attorneys-at-laws, Hoyng ROKH Monegier, Paris, France

Sebastian Kratzer, Sven Krause, Max von Leitner, Elisa In den Birken, Chiara Prinz, Attorneys-at-laws, Hoyng, ROKH, Monegier, Düsseldorf, Germany

Dr. Wolfgang Kellenter, Dr. Matthias Rothkopf, David Rüther, Nina Mackenstedt, Attorneys-at-laws Hengeler Mueller, Düsseldorf, Germany

RESPONDENT AND APPLICANT IN THE MAIN PROCEEDINGS BEFORE THE CFI

Valeo Electrification, Cergy, France

hereinafter also referred to as "Valeo"

represented by: Tilmann Felix Roediger, Jonas Smeets and Fabian Saupe, Attorneys-at-law, Bird & Bird LLP, Düsseldorf, Germany

PATENT AT ISSUE

EP 3 320 602

LANGUAGE OF THE PROCEEDINGS

English

DECIDING JUDGES

This order was issued by Klaus Grabinski, Standing Judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

□ ORD_56545/2024 in the main proceedings concerning provisional measures in ACT_37931/2024 UPC_CFI_347/2024 issued by the Local Division Düsseldorf on 31 October 2024

□ ORD_60265/2024 in the main proceedings concerning the App_59991/2024 UPC_CFI_347/2024 issued by the Local Division Düsseldorf on 20 November 2024

FACTS AND PARTY'S REQUEST

1. In the impugned order of 31 October 2024, the Court of First Instance, Düsseldorf Local Division, issued a preliminary injunction against Magna but exempted thereof Magna's supply obligations of the accused embodiments I and II (existing on 8 October 2024) regarding 5 BMW models listed in the order.

2. On 6 November 2024, Magna filed an application for rectification of the impugned order under R. 353 UPC Rules of Procedure (UPC RoP) arguing, insofar as relevant in the context of this order, that there is an obvious slip in the list because the impugned order intended to list all BMW models currently equipped with the accused embodiments for which delivery obligations existed on 8 October 2024 but forgot to mention the "BMW 2 Series Gran Coupé" model.

3. On 14 November 2024, Magna filed an appeal from the impugned order. It also filed an application for suspensive effect regarding the impugned order insofar as the exception to the injunction issued therein does not include the "BMW 2 Series Gran Coupé" model.

4. On the same day, the Standing Judge of the Court of Appeal issued a respective order with effect until the Court of First Instance has decided on the application for rectification.

5. On 20 November 2024, the Court of First Instance, Düsseldorf Local Division, dismissed the application for rectification of the impugned order. The Court essentially stated that there is no obvious slip as the model "2 Series Gran Coupé" was not introduced into the preliminary injunction proceedings by Magna. In these proceedings Magna in its submissions explicitly only referred to the 5 BMW models listed in the impugned order. Insofar as Magna referred to the "2 Series" in general, it did, until the end of the oral hearing, neither disputed Valeo's understanding that this meant the "2 Series Active Tourer", nor did it mention model "2 Series Gran Coupé" or link the internal vehicle code of the model mentioned in exhibit HRM 24a to the model.

6. On the same day, Magna filed again an application for suspensive effect.

7. Magna objects the reasoning of the Court of First Instance in its order of 20 November 2024 that the model "BMW 2 Series Gran Coupé" was not introduced as such and the internal vehicle code "F74" was not linked to it by stating that the Court of First Instance never indicated that it wanted to include a list of exempted models in its order. Respectively, the significance of Manga's list and BMW specific vehicle codes or model names never came up. Magna also argues that the preliminary injunction as issued in the impugned order is based on the Court of First Instance's own reasoning too broad and needs to be limited by way of extending the exemption to the model "BMW 2 Series Gran Coupé". Valeo has served the enforcement security on 13 November 2024.

8. Magna asks the Standing Judge of the Court of Appeal to order that the appeal shall have suspensive effect

   1) to the extent that the order prohibits Magna from supplying the accused embodiments I and II towards their customer BMW within the framework and the scope of the existing delivery obligation (status 8 October 2024) for model "BMW 2 Series Gran Coupé" or, in the alternative,

   2) as set out under 1), at least until the panel of the Court of Appeal responsible and competent to decide on this application has reviewed the application and issued an order to the contrary.

REASONS

9. On the basis of Magna's submissions, the Standing Judge of the Court of Appeal considers that Magna's interest in maintaining the status quo exceptionally outweighs Valeo's interest in the immediate enforcement until the panel of the Court of Appeal to which the appeal from the impugned order has been assigned and which will finally decide on the appeal from the impugned order (, which is panel 2 of the Court of Appeal), has decided on Magna's application for suspensive effect, insofar as the exception to the injunction issued in the impugned order does not include the "BMW 2 Series Gran Coupé" model.

10. To minimize the time until a final order on the application for suspensive effect will be issued by panel 2 of the Court of Appeal will be issued, the Standing Judge orders that Valeo be given an opportunity to comment.

ORDER

1. The effect of the impugned order is suspended until panel 2 of the Court of Appeal has decided on Magna's request to suspend the effect of the impugned order, insofar as the injunction issued therein does not include the "BMW 2 Series Gran Coupé" model.

2. Valeo is given the opportunity to comment on Magna's request for suspensive effect within 10 calendar days of the service of this order.

3. In all other respects the application for suspensive effect is transferred to panel 2 of the Court of Appeal.

Issued on 21 November 2024

KLAUS
STEFAN
MARTIN
Grabinski

Digitally signed
by KLAUS STEFAN
MARTIN Grabinski
Date: 2024.11.21
17:39:06 +01'00'

Klaus Grabinski
Standing Judge