

The Unified Patent Court grants interim relief regarding a European patent validated in Spain: critical considerations

This paper addresses the recent decision of the Hamburg Local Division of the Court of First Instance of the Unified Patent Court dated 14 August 2025 (UPC_CFI_387/2025), in which the court grants interim relief regarding the Spanish validation of a European patent.

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1. Introduction

1.1. As we have explained in a series of previous documents¹, the Unified Patent Court (UPC) may, in certain very specific cases and within strict

limits, extend its jurisdiction to hear cases of European patent infringements that have an effect in States that are not party to the Agreement on a Unified Patent Court (UPC Agreement).

¹ 'Limits of the Unified Patent Court's long arm with regard to Spain (I): international jurisdiction', 'Limits of the Unified Patent Court's long arm with regard to Spain (II): the controversial judgment of the Court of Justice in the BSH/Electrolux case', 'Limits of the Unified Patent Court's long arm with regard to Spain (III): applicable law'; 'Limits of the Unified Patent Court's long arm with regard to Spain (IV): the recognition and enforcement of court decisions'. See footnote 4 below.

With regard to the granting of interim (injunctive or other) relief, the court's jurisdiction here may be based on the fact that the court has jurisdiction to hear the substance of the matter. However, the UPC also has jurisdiction to grant interim relief ("provisional measures"), in relation to the infringement of a classic European patent validated in Spain (or in another non-contracting State) or of a supplementary protection certificate, even if the UPC lacks international jurisdiction to hear the substance of the matter, although in that case the effect of the interim relief is limited to the territory of the court granting it (pursuant to Art. 35 of the Brussels Ia Regulation² and its recital 33).

- 1.2. Now, the Hamburg Local Division of the Court of First Instance of the UPC has recently issued a decision — dated 14 August 2025 (UPC_CFI_387/2025) — in which it grants interim relief against a number of defendants for infringement of a unitary patent and the parallel European patent validated in Spain; such relief has effect in the territory of parties to the UPC Agreement (contracting States), as well as in the territory of the Kingdom of Spain.

In this decision, the court grants such interim relief because it is of the opinion that it has jurisdiction to hear the substance of the matter (both the infringement of the unitary patent in the

contracting States and the infringement of the Spanish validation of the European patent that is the basis of the unitary patent). In this regard, the court makes a series of statements— as we will explain, not always accurate—concerning its international jurisdiction.

For a proper understanding of the decision analysed, it is necessary to bear in mind some of the facts of the case, in particular those relating to the defendants and their domiciles, which we summarise in the following section, before examining the arguments on which the court bases its jurisdiction.

2. Relevant facts

The claim is filed with the UPC by a UK company, the holder of a unitary patent, whose basic European patent was also validated in Spain. There are four defendants: a Hong Kong company domiciled there, two companies domiciled in Germany and a fourth domiciled in Sweden. The Hong Kong-based company is the operator of the website on which the products that the claimant considers to be infringing the aforementioned patents are marketed. One of the companies based in Germany is the official distributor of the products, which it markets on a website with a national domain name corresponding to that country ('.de'), as well as in a physical establishment in that country. The other company domiciled in Germany is

² Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December on jurisdiction, recognition and enforcement of judgments in civil and commercial matters.

mentioned on the packaging of the allegedly infringing products and acts as the authorised representative in the European Union of the manufacturer, which is the company domiciled in Hong Kong. Finally, the company domiciled in Sweden is a subsidiary of the company domiciled in Hong Kong, which merely manages the specific website for that country and markets the products in that territory.

3. The UPC's jurisdiction to hear actions for infringement of the unitary patent and to grant interim relief in the States where it takes effect

3.1. Both the Brussels Ia Regulation (Art. 4(1)) and the Lugano Convention³ (Art. 2) establish the general jurisdiction, when determining international jurisdiction, as that of the defendant's domicile, so that persons domiciled in a Member State of the European Union are subject, regardless of their nationality, to the courts of that State. On this basis, the decision of the Hamburg Local Division now under review correctly concludes that the UPC has international jurisdiction to hear actions for infringement of the unitary patent against the two companies domiciled in Germany.

However, the court's interpretation to justify its international jurisdiction in relation to the company domiciled in Sweden and the company domiciled in Hong Kong is no longer correct.

3.2. With regard to the Swedish company, the Hamburg Local Division takes jurisdiction by virtue of Article 8(1) of the Brussels Ia Regulation, according to which "[a] person domiciled in a Member State may also be sued [...] where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings". According to the decision in question, the conditions for the application of this provision would be met, since the Swedish company belongs to the same group as the others, is responsible for the Swedish market and the products it markets are the same as those distributed by the German companies.

However, in order to establish the international jurisdiction of the court to hear the actions against the Swedish company, it is not necessary to resort to this provision because, as Sweden is a Member State of the European Union and also a contracting State party to the UPC Agreement, the jurisdiction of this court to hear actions against the Swedish company is based, as is the jurisdiction to hear actions against the German companies, on defendant's *forum domicilii* (Article 4 of the Brussels Ia Regulation). In fact, where different defendants are domiciled in

³ Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Lugano Convention), signed in 2007 by the European Union, Denmark, Iceland, Norway and Switzerland.

contracting States, but not all are domiciled in the same State, that court shall have jurisdiction on the basis of the defendant's forum of domicile; furthermore, for the internal distribution of jurisdiction within this court, Article 33(1)(b) UPC Agreement applies, so that infringement proceedings may be brought before the local division of any of the States in which any of

The domicile of the defendant acting as authorised representative in the EU is used to anchor international jurisdiction

the defendants “has its residence, or principal place of business, or in the absence of residence or principal place of business, its place of business, or the regional division in which that Contracting Member State participates”.

Article 8(1) of the Brussels Ia Regulation applies when one defendant is domiciled in the State of a court and another defendant is domiciled in a State outside the European Union. Consider, for example, the case in which X, domiciled in France, and Y, domiciled in Ireland, are sued (before a court other than the UPC). In principle, according to the defendant's forum of domicile, the French courts do not have jurisdiction to hear the action against Y because the defendant is not domiciled in France. For this reason,

Article 8(1) of the Brussels Ia Regulation introduces a special rule to allow the same court to hear all the claims when they are closely connected.

However, in the case of the UPC (which is a “common court” under the Brussels Ia Regulation), international jurisdiction derives from the fact that the defendants are domiciled in con-

tracting States, as provided for in Article 71b (“a common court shall have jurisdiction where, under this Regulation, the courts of a Member State party to the instrument establishing the common court would have jurisdiction in a matter governed by

that instrument”). Consequently, since the various defendants are domiciled in States that are both parties to the UPC Agreement (two defendants were domiciled in Germany and a third in Sweden), the court has jurisdiction without the need to refer to Article 8(1) of the Brussels Ia Regulation, and Article 33(1)(b) of the aforementioned agreement must be referred to in order to determine the jurisdiction — internal, not international — of the various divisions of the Court of First Instance of the UPC.

- 3.3. In our opinion, the reasoning of the UPC is equally questionable when it bases its international jurisdiction to hear actions for infringement of the unitary patent brought against the parent company domiciled in Hong Kong on the provisions of Articles 7(2) and

71a of the Brussels Ia Regulation, as these provisions do not confer such jurisdiction.

Indeed, according to Article 7(2) of that regulation, “[a] person domiciled in a Member State may be sued in another Member State [...] in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur”. The provision establishes the jurisdiction of the place of the infringement, but only recognises jurisdiction in relation to persons domiciled in a Member State of the Union, so that provision cannot be invoked to confer jurisdiction in relation to a company domiciled in Hong Kong. The Hamburg Local Division is aware of this and therefore adds that it would be Article 71a(2) of the Brussels Ia Regulation that would extend the jurisdiction of the court when the defendant is domiciled in a third country that is not a member of the European Union. However, in reality, Article 71a(2) merely stipulates that the UPC has the status of a common court for several Member States, so that it shall be considered a court of a Member State when, in accordance with the instrument establishing that common court, it has jurisdiction in matters falling within the scope of this regulation, without this therefore extending the jurisdiction of the place of infringement to cases where the defendant is not domiciled in the European Union.

The UPC’s international jurisdiction to hear claims against defendants who are not domiciled in a Member State

of the European Union (whether or not it is a contracting State) or in a State party to the Lugano Convention is based, on the contrary, on the provisions of Article 6(2) of the Brussels Ia Regulation and Article 4(1) of the Lugano Convention, which stipulate that jurisdiction shall be governed in each Member State by the internal law of that Member State, and not in accordance with the regulation or the convention. However, in order to prevent national laws from depriving the UPC of jurisdiction, Article 71b(2) of the Brussels Ia Regulation also assigns jurisdiction to the UPC in such cases, providing that “where the defendant is not domiciled in a Member State, and this Regulation does not otherwise confer jurisdiction over him, Chapter II shall apply as appropriate regardless of the defendant’s domicile”, which implies recognition of the UPC’s jurisdiction.

4. The UPC’s jurisdiction to hear actions for infringement of a European patent validated in Spain and to grant interim relief in our country

- 4.1. With regard to the UPC’s international jurisdiction to hear actions and interim relief applied for in relation to the classic European patent validated in Spain, the Hamburg Local Division starts from the premise that the court may have jurisdiction “also with respect of the infringement of national parts of an European Patent outside of the UPCA countries and even outside of the European Union”. This statement is correct, provided that the strict conditions already explained in our

previous analyses on the UPC's jurisdiction, to which we now refer⁴, are met. Thus, for example, among other limitations, when the infringement action concerns a European patent validated in Spain, the UPC's jurisdiction cannot in any case be based on the jurisdiction of the place of infringement (Article 7(2) of the Brussels Ia Regulation and Article 5(3) of the Lugano Convention). This is because, although this is a jurisdiction applicable to the infringement of patents or supplementary protection certificates, it is only granted to the national courts of the place where the infringement occurs, so only to the Spanish courts, since the infringement of these titles can only occur in Spain and never in the territory of a contracting State. Similarly, when one company infringes a unitary patent and another company (even if it belongs to the same business group) infringes the European basic patent validated in a non-contracting State (as would be the case with a European patent validated in Spain), the UPC's jurisdiction to hear all claims cannot be based on Article 8(1) of the Brussels Ia Regulation, even if the various defendant companies belong to the same business group and the parent company that sets the group's guidelines is domiciled in a contracting State.

4.2. In this case, the Hamburg National Division has taken jurisdiction to hear the infringement proceedings brought against the Hong Kong company and the German company that is the authorised representative of that Hong Kong company in the European Union in relation to the European patent validated in Spain. However, it did not take jurisdiction to hear the infringement proceedings relating to that European patent validated in Spain against the German company that distributes the products in Germany and the Swedish company that distributes them in Sweden.

4.3. With regard to the latter two companies (identified in the decision as defendants 2 and 4), the Hamburg Local Division states that "in order to establish jurisdiction requires at least the plausible allegation of infringing acts by that party in the country in question, here Spain. However, the Applicant did not provide any reliable facts that Defendant 2) is or was involved in any marketing of the attacked embodiments in Spain. The same applies to Defendant 4)".

As we have already noted, the UPC's jurisdiction to hear actions relating to European patents validated in Spain cannot be based on the fact that acts

⁴ Specifically, we refer to the following commentaries: 1) "Limits of the Unified Patent Court's long arm with regard to Spain (I): international jurisdiction", dated 4 June 2025, [link](#); 2) "Limits of the Unified Patent Court's long arm with regard to Spain (II): the controversial judgment of the Court of Justice in the BSH/ Electrolux case", dated 6 June 2025, [link](#); 3) "Limits of the Unified Patent Court's long arm with regard to Spain (III): applicable law", dated 9 June 2025, [link](#); and 4) "Limits of the Unified Patent Court's long arm with regard to Spain (IV): the recognition and enforcement of court decisions," dated 12 June 2025, [link](#).

of infringement have taken place in our country, but can only be based on the defendant's forum of domicile (or on the existence of an express or tacit submission). However, even so, what the Hamburg Local Division makes clear is that, even if the defendant is domiciled in a contracting State and is therefore subject to the courts of that State (including common courts, such as the UPC, established in international treaties to which that State is a party), in order for the court to take jurisdiction, it is necessary for the claimant to at least allege in a "plausible" manner that the defendant has engaged in acts in Spain that infringe the European patent validated in our country (see para. 48 of the decision).

- 4.4. On the other hand, in relation to the German company that acts as the official representative in the European Union of the Hong Kong company (identified as defendant 3), the court takes jurisdiction to hear the case of infringement of the European patent validated in Spain by applying Article 4 of the Brussels Ia Regulation, as it lies with the court of the defendant's domicile and because it is of the opinion that this company "could at least be subject to an injunction for the infringement of the Spanish national part of the patent in suit", based on Article 71(2) of the Patents Act 24/2015 of 24 July (national law invoked by the claimant). In accordance with this provision, "2. The relief referred to in paragraphs a and e of the preceding section may also be applied *ford*, where appropriate, against intermediaries whose services are used by a third party to

infringe patent rights, even if the acts of those intermediaries do not in themselves constitute an infringement [...]. Such relief shall be objective, proportionate and non-discriminatory".

Given that the company manufacturing the products was domiciled in Hong Kong and, therefore, in a non-member state of the European Union, in accordance with Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety, and Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products, it had to appoint an "authorised representative" in the European Union in order to be able to market its products in this territory. According to Regulation (EU) 2023/988, such an "authorised representative" is "any natural or legal person established within the Union who has received a written mandate from a manufacturer to act on that manufacturer's behalf in relation to specified tasks with regard to the manufacturer's obligations under this Regulation". As the German company identified in the decision as defendant 3 acted as the authorised representative and once the obligations imposed by EU legislation on that authorised representative had been fulfilled, the Hamburg Local Division concludes that that company would be providing an indispensable service to the actual infringer in Spanish territory and, therefore, may be subject to an injunction as an intermediary, within the meaning of the aforementioned

Article 71(2) of the Patents Act (see para. 55 of the decision).

- 4.5. With regard to the company domiciled in Hong Kong, the Hamburg Local Division states that, in principle, the UPC lacks jurisdiction to hear actions against that company because it is not domiciled in a Member State of the European Union or in a State party to the Lugano Convention and because it is also not possible to apply the jurisdiction of the place of infringement, as the UPC cannot be equated with a Spanish court, since the Kingdom of Spain is not a contracting State. With regard to this Hong Kong-based company, the Hamburg Division notes that the UPC's jurisdiction could only be based on Article 8(1) of the Brussels Ia Regulation (para. 57 of the decision).

The applicable law is Spanish law, which must be proven by the claimant

Article 8(1) of the Brussels Ia Regulation — according to which “[a] person domiciled in a Member State may also be sued: (1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings” - is not only applicable when one defendant is domiciled in the State of a court and another

defendant in a different State of the European Union. It also applies when one defendant is domiciled in a Member State of the European Union and another is not, and the claims are closely related.

In this regard, it is important to note that the Hamburg Local Division applies, as it must, the case law of the Court of Justice established in its judgment of 13 July 2006, Roche (C-539/03, EU:C:2006:458, para. 41), according to which the possibility of bringing proceedings before the courts of the domicile of any of the defendants “does not apply in European patent infringement proceedings involving a number of companies established in various Contracting States in respect of acts committed in one or more of those States even where those companies, which belong to the same group, may have acted in an identical or similar manner in accordance with a common policy elaborated by one of them”. Consequently, in order to apply Article 8(1) of the Brussels Ia Regulation, it is not sufficient for the company domiciled in Hong Kong to have engaged in acts allegedly infringing the unitary patent and the European patent validated in Spain, nor for the German company acting as its representative in the Union to have engaged in acts in Spain allegedly infringing the European patent validated in Spain. On the contrary, as the Hamburg Local Division points out, “the close connecting has to be assessed based on infringing acts in

Spain and not only in other EU- /UP-CA-countries”.

This close connection is considered to exist in this specific case because the German company “is an indispensable party in the distribution of the attacked embodiments in the European Union. Without an authorized representative, a manufacturer based outside of the EU is not able to distribute its electronic products. This brings the authorized representative into the position that by terminating its role, the distribution of the products are illegal. This might be limited only until the manufacturer installed a new authorized representative but still enables the authorized representative to stop any distribution by its own will. Due to the legal framework, there is a necessary, legally established close connection between Defendant 1) and Defendant 3) for the distribution of the attacked embodiments in the EU, including Spain, as the ‘authorised representative’ has the mandate from the manufacturer to act on its behalf in relation to specified tasks with regard to the manufacturer’s obligations under the relevant Union harmonisation legislation”. In other words, the German company, in its capacity as authorised representative, would be playing an essential role in the distribution in the European Union (including Spain) of the Hong Kong company’s electronic products, which require a CE certificate and declaration of conformity. And, given that the German-domiciled company would have allegedly acted in Spain as an intermediary within the meaning of Directive 2004/48/EC and Article

71(2) of the Patents Act, this opens the door to the universal jurisdiction of the UPC to also hear the infringement action against the Hong Kong-based company on the basis of Article 8(1) of the Brussels Ia Regulation, given the “close connection” between the two companies.

- 4.6. Furthermore, the court adds two additional arguments to assert its jurisdiction, citing the provision of Article 33(1)(b) of the UPC Agreement and Article 35 of the Brussels Ia Regulation. However, for the reasons set out below, these provisions are irrelevant and cannot justify its jurisdiction.

The former provision regulates the internal distribution of jurisdiction between the various divisions of the Court of First Instance of the UPC and, consequently, has no value in justifying the court’s international jurisdiction. Therefore, the reference to this provision is no more relevant than the mention made therein of the existence of a commercial relationship between the various defendants (providing that “[a]n action may be brought against multiple defendants only where the defendants have a commercial relationship and where the action relates to the same alleged infringement”), a commercial relationship that is deemed to exist between the company domiciled in Hong Kong and the German company that is its authorised representative in the European Union.

In turn, the Hamburg Local Division also invokes Article 35 of the Brussels Ia Regulation, emphasising that “opens

for jurisdiction even if the courts of another Member State have jurisdiction as to the substance of the matter”. However, what the Hamburg Local Division fails to mention in making this statement is that, under this provision, what is envisaged is the possibility that, even if a court does not have jurisdiction to hear the substance of the matter, it may still grant interim relief. In that case, however, the effect of the relief must be limited to the territory of the court granting it, as highlighted in recital 33 of the Brussels Ia Regulation, which states that “[w]here provisional, including protective, measures are ordered by a court of a Member State not having jurisdiction as to the substance of the matter, the effect of such measures should be confined, under this Regulation, to the territory of that Member State”.

In contrast, in the case here considered, the interim relief granted by the Hamburg Local Division with respect to the Hong Kong-based company and the German company acting as its ‘authorised representative’ is granted with effect in Spain, as the Local Division considers that the UPC does

have jurisdiction to hear the action for infringement of the European patent validated in Spain brought against those companies.

- 4.7. In conclusion, it should be noted that this decision of the Hamburg Local Division of the UPC makes it clear that this court does not have international jurisdiction to hear actions for infringement of patents validated in Spain and to grant interim relief with effect in that country, other than within the strict rules laid down in the Brussels Ia Regulation and the Lugano Convention.

This decision is equally important because it makes it crystal clear that, when the court hears cases relating to classic European patents validated in States that are not contracting States (as well as to hear cases relating to supplementary protection certificates granted by those States), the applicable law will be the patent law of the non-contracting State in which the classic European patent has been validated (in our case, Spanish law). And that law must be proven by the claimant.