

EIP

UPC Declines to Grant Provisional Injunction

SES-imagotag SA v Hanshow Technology Co. Ltd. and others UPC_CFI_292/2023

Order of 20 December 2023 (ORD_596193/2023)^[1]

SES-imagotag is the proprietor of EP 3883277, which had been opted out of the jurisdiction of the UPC, then this opt out was withdrawn and unitary effect requested. The patent relates to electronic labels, and the patentee alleged infringement by Hanshow Technology and distribution companies based in France, Germany and the Netherlands, in particular by electronic labels of the “Nebular” and “Stellar” series, and sought a provisional injunction to restrain infringement by these labels.

The Munich local division rejected a challenge to its competence by the defendants, pointing out that one of the alleged acts of infringement was a use in a Munich supermarket. It was not relevant to the question of jurisdiction whether that act was finally adjudged to be an infringement. The court also decided that all the alleged infringing acts in Europe were attributable to all the defendants, so that jurisdiction could be exercised over all of them.

However, the court was not convinced with sufficient certainty that the patent was infringed. In particular, it considered that the location of the antenna on the alleged infringing products was not in accordance with the claim definition. Interestingly, the court looked at both the granted claim wording, but also the original claim wording which was amended during prosecution, in arriving at its claim construction.

Accordingly, the court declined to grant a provisional injunction and ordered the patentee to pay the defendant’s costs of the action, capped at €200,000 based on setting the value of the case at €2,000,000. The recoverable costs were ordered to include the costs associated with the preparation of a protective letter (Rule 207 RoP), which had been filed

a few days before the provisional injunction application.

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In view of its findings on infringement, the court declined to consider the validity of the asserted patent.

[1] <https://www.unified-patent-court.org/en/node/522>