

EIP

Service on defendants outside the jurisdiction

**Panasonic Holdings Corporation v Xiaomi Technology Germany GmbH & 9 Others
(UPC_CFI_219/2023)**

Order of 8 December 2023

The Claimant argues that defendants 1, 2, and 8 based in China and 7 based in Hong Kong have been effectively served by service at the business address in Germany of defendant 3, Xiaomi Technology Germany GmbH. The parent company of the defendants holds all shares in defendants 1, 2, 3, 7 and 8 either directly or indirectly through intermediary companies in which the parent company in turn holds all shares. The claimant argues the group of companies presents itself as a unit when conducting business and notes from comments made in these proceedings that the companies are uniformly represented before Mannheim local division. Defendant 2 conducts negotiations about SEPs on behalf of the whole group.

Under Rule 275.2 RoP the court may order that steps already taken to bring the statement of claim to attention of the defendant by an alternative method is good service.

Defendant 3 argues that it was not a branch of defendants 1, 2, 7 and 8. To order service under Rule 275.2 would break fundamental procedural guarantees.

Held

The request under Rule 275.2 RoP was rejected.

It is clear from paragraph 275.1 that paragraph 275.2 only applies when it has not

previously been possible to serve in accordance with Sections 1 and 2 of Part 5, Chapter 2. It is mandatory that an attempt at service should be made in accordance with Rules 270-274 RoP, specifically Rule 273 and Rule 274 where the defendant's place of business is outside the contracting states of UPCA. These rules do not provide for service at a place of business.

An attempt at service must be made in accordance with Rule 274(a)(ii) of the Regulation under the Hague Service Convention (Hague Convention), as the People's Republic of China and Hong Kong do not fall within the scope of Regulation (EU) 2020/1784, but are parties to the Hague Convention.

No such attempt has yet been made. Translations required for service have been requested from the claimant but have not yet been submitted.

The court differed from the opinion of Munich local division (ORD 576855/2023) that alternative service is possible even if an attempt at service under Rules 270-274 has not yet been completed. This court (Mannheim local division) makes clear that Rule 275.2 cannot be interpreted as in principle permitting service without first having attempted service in accordance with the provisions applicable to service abroad. This is an exception provision. Formal service on the defendant is an internationally recognised principle not a superfluous formality.

The Court also referred to Article 24(1)(d) UPCA according to which international agreements bind UPC. And further commented that neither Regulation (EU) 2020/1784 nor the Hague Service Convention permit the imputation of knowledge advocated by the claimant as a substitute for formal service. If a method of "fictitious" service was permitted this would be a violation of Art. 47 Para. 2 of the Charter of Fundamental Rights of the European Union and Art. 6 Para. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It would also contravene Art 42 of TRIPS which establishes a minimum procedural guarantee that the defendant be informed in writing of the infringement allegation in a timely manner. The court further referred to German national provisions constitutionally guaranteeing minimum content of fundamental procedural guarantees.

The claimant was ordered to submit the documents required for service under Hague Convention, in particular, translations.