

EIP

Decisions by Default granting Provisional Injunctions

**air up group GmbH v Guangzhou Aiyun Yanwu Technology Co., Ltd. UPC_CFI_508/2023
and UPC_CFI_509/2023**

Decisions by default of 9 January 2025 (ORD_1359/2025[1] and ORD_1378/2025[2])

The claimant brought actions for provisional injunctions against a Chinese company Guangzhou Aiyun Yanwu Technology Co., Ltd., asserting two patents EP 3655341 and EP 3897305, both relating to drinking devices for retronasal reception of an aroma substance. There had been pre-litigation correspondence with the defendant, so the Registry asked the person who had communicated in the pre-litigation correspondence if they would accept service by email on a voluntary basis, but this email was unanswered. The court sent the documents for service to the competent authority in China, which were transmitted (posted) on 24 May 2024 and received on 11 June 2024, but despite repeated chasing by the Registry, service had still not been effected by December 2024.

The Munich local division considered that under Article 15 of the Hague Service Convention, after six months from transmission it was entitled to consider that service had failed. The court held it mandatory to consider alternative service, but decided that there was no alternative means available. Accordingly, in two orders^[3] issued on 9 December 2024, the court ordered pursuant to Rule 275.2 RoP that the steps already taken constituted good service, and ordered that the 14-day deadline to respond to the applications for provisional injunctions should run from that date.

No submissions were received from the defendant.

Accordingly, the applicant applied for a decision by default, and this was granted. The

court carried out in respect of each patent a detailed comparison of the accused products against the claims, and considered that the allegations of infringement were sufficiently proved. The court considered that a provisional injunction was necessary and proportionate because “the Defendant reacted dismissive to the Applicant’s pre-litigation warning”, noting that “the behavior shown by the Defendant in their response to the warning letter does not suggest that defendant will refrain from further acts of infringement in the future.”

In two further orders on service,[4] the court decided that it was not necessary to attempt service of the decisions by default through the competent authorities in China pursuant to the Hague Service Convention, the service of the applications having been, in its view, “seriously and definitively refused”. It noted that “It is not compatible with the principle of effective judicial protection to force a claimant or even the court to take steps to effect service which are clearly futile. This is particularly true in proceedings for interim relief. Service of the judgment by default in accordance with Rules 270-274 of the Rules of Procedure must be regarded as impossible.” The court therefore went straight to an order pursuant to Rule 275.2 RoP that publication of the decisions by default on the UPC website constituted good service, stipulating that they be deemed effective as of the date of the order.

Here, the Munich local division seems to have struck a pragmatic balance between respecting the UPC’s obligations under the Hague Service Convention, and providing reasonable and timely relief for patentees in jurisdictions where judicial service cannot necessarily be achieved in a timely manner.

[1] <https://www.unified-patent-court.org/en/node/2232>

[2] <https://www.unified-patent-court.org/en/node/2276>

[3] <https://www.unified-patent-court.org/en/node/1310> and <https://www.unified-patent-court.org/en/node/1311>

[4] <https://www.unified-patent-court.org/en/node/25596> and <https://www.unified-patent-court.org/en/node/25617>